

EXHIBIT 1

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

MICHAEL DONALDSON,

Plaintiff,

v.

TRAE-FUELS, LLC, et al.

Defendants.

Case No.: 3:18-cv-00097

DECLARATION OF MICHAEL DONALDSON

Pursuant to 28 U.S.C. § 1746, I, Michael Donaldson, affirm that I am competent to testify to the matters stated herein, and hereby declare as follows:

1. I am an adult citizen of the U.S., competent to testify to the matters in this Affidavit, and I have personal knowledge of the facts set forth herein.

2. I worked as an accountant and controller for various companies for thirty-two years.

3. On October 17, 2013, I began working for Defendant Trae Fuels.

4. Trae Fuels had between thirty and forty employees during 2013 and 2014, including both office staff and employees that worked on the production line. The office staff consisted of General Manager John Frink, who was responsible for the overall management of Trae Fuels, Plant Manager Clayton Walker, who was responsible for managing the production line, Christian Bach, who was responsible for sales, myself, who was the controller, and Office Manager Fran Holliday, who was responsible for assisting the other office staff and working in the scale house measuring incoming inventory and outgoing product.

My job duties

5. As Controller, I was responsible for creating various financial reports and for informing Frink of the financial position of Trae Fuels. As part of my duties, I created monthly financial reports that Trae Fuels sent to EnviroTech and eventually sent to Trae Fuels's and EnviroTech's bank to support a line of credit Trae Fuels had with the bank. I also provided Frink frequent cash reports explaining the funds Trae Fuels was spending, making, and had available to spend.

6. Additionally, Trae Fuels made me responsible for maintaining employee files and sending hiring and insurance paperwork to EnviroTech's Human Resources Manager, Beth Aleman. I was also responsible for managing Trae Fuels's payroll system.

7. I was not responsible for hiring or firing employees.

8. I did not have authority to sign checks or send wire transfers without approval on behalf of Trae Fuels. To my knowledge, only Frink, EnviroTech Chief Financial Officer Kevin Whyrick, of EnviroTech, and EnviroTech Chief Executive Officer Roger Knoph had authority to sign checks or approve wire transfers.

9. I did not have authority to borrow against Trae Fuels's line of credit with the bank without supervisor approval.

10. I was not responsible for sales and did not have authority to decide how much inventory to buy or product to produce. Those responsibilities were handled by Trae Fuels salesman Christian Bach, General Manager Frink, and Plant Manager Clayton Walker, who were experienced in the heating pellet business.

11. For about the first two months of my employment, Trae Fuels was not producing pellets and was instead preparing the plant to be operational. In December 2013, I began

completing monthly financial reports that I sent to my EnviroTech accounting supervisors, CFO Whyrick and Controller Michelle Mills.

Trae Fuels struggled with operational and sales problems and lost money

12. Throughout the beginning of my employment, Trae Fuels struggled with operational problems that prevented Trae Fuels from producing pellets from the logs it purchased. General Manager Frink, and others, spent significant portions of their time attempting to fix the various problems that prevented the plant from running.

13. Trae Fuels also struggled to obtain significant sales and only had one major customer.

14. Trae Fuels was funded by an initial investment from EnviroTech and its minority owners with the exception of Frink, who failed to provide Trae Fuels the funds for his 20% ownership. CFO Whyrick repeatedly directed me to ask Frink about these funds but Frink failed to pay.

15. In addition to its initial funding, Trae Fuels was approved for a line of credit with UMB Bank, the same bank EnviroTech used.

From October 2013 until mid-May 2014, my employment went well

16. From my hiring in October 2013 until mid-May 2014, my supervisors praised my work and indicated they were satisfied with my performance. Frink indicated he was happy with my work, as did Whyrick, LaRocco, and Aleman.

17. My supervisors and I exchanged day-to-day questions and instructions about how EnviroTech wanted Trae Fuels to characterize certain accounting items, the payroll system and IFS system, and requests and instructions regarding insurance and new hire paperwork. These interactions were normal in accounting and with these systems, and experienced EnviroTech

employees Aleman, Whyrick, Controller Michelle Mills, Debby Vannest, and Gohar Wise had similar questions or problems arise in their day-to-day work.

18. CFO Whyrick approved my monthly financial reports each month. Additionally, Whyrick periodically agreed with my suggestions for better processes for Trae Fuels's accounting procedures and financial practices, although I was constricted in the changes I was authorized to make and had to get permission for simple tasks, such as adding an account to the general ledger.

19. To the extent I made mistakes in my work, they were minor and my supervisors gave no indication that they believed my performance was deficient. Prior to my diagnosis with cancer, I was not provided any counseling forms nor was I told by anyone that I needed to improve my work. When instructed to do something differently, I made the corrections and followed the advice of my supervisors.

I experienced health issues and was diagnosed with pancreatic cancer

20. On March 25, 2014, I experienced significant blood loss and had to be hospitalized in the Intensive Care Unit. The next morning, I called Trae Fuels and informed them that I was at the ICU and would need leave. Frink and Walker visited me in the hospital.

21. To discover why I had experienced this blood loss, I began undergoing medical testing. In April 2014, I learned that I had a mass on my pancreas. I informed Frink of this the day of my diagnosis as we were both at work at the time. On Thursday May 15, I learned I had Stage IV inoperable adenocarcinoma pancreatic cancer and that I would need to see an oncologist on Monday, May 19. In 2014, seventy-five of people diagnosed with this cancer died within one year while the five-year survival rate was 6%. On Monday, May 19, 2014, I called Frink and told him of the diagnosis and that I would be out that Monday morning.

22. On May 19, during my appointment with my oncologist, I was diagnosed with pancreatitis and taken to the hospital. I called Frink and informed him that I was being hospitalized and not to expect me at work.

23. On May 21, I was able to go home from the hospital. While I was in the hospital, my wife and I had learned that we were chosen to be adoptive parents by the birth mother of a baby that would be born on Friday, May 23, 2014 and that she wanted to meet us on Thursday, May 22, 2014. The next morning after being discharged from the hospital we would have to fly to Utah to meet the birth mother and adopt the baby. Immediately after my discharge from the hospital and before leaving for Utah the next morning, I drove one-hour to Trae Fuels and dropped off my company phone (which I had been using to work from the hospital) because it was not charging properly. I went to Utah, adopted my son, and returned to work the day after Memorial Day on May 27, 2014.

Defendants immediately subjected me to intense scrutiny and unfair criticism following my return to work after my cancer diagnosis

24. On the day I returned to work, Frink asked me to have a meeting in his office. When I met with Frink, I learned that EnviroTech's head of HR Beth Aleman was on the phone. Aleman started off the meeting by saying "I'm documenting," and then began interrogating me about me leaving my work phone at work during my trip to Utah.

25. I explained that I had brought the phone to the office because it had not been charging properly and had asked that it be sent to be fixed. I further explained that I had been available on my personal cell phone number, which Trae Fuels and EnviroTech were aware of and had called me on before my trip.

26. Aleman backed off her criticism at that point and the call ended.

Aleman and LaRocco met with Frink and I on June 4, 2014

27. About a week later, Aleman and corporate strategist LaRocco traveled to Virginia and met with Frink and me.

28. In this meeting, Aleman and LaRocco told Frink and I that EnviroTech was not happy with Trae Fuels's financial losses and the fact that Trae Fuels was running out of cash. They told me to focus on ensuring that Frink understood Trae Fuels's finances and LaRocco said that he would develop a "score card," to help capture Trae Fuels's financial position. Aleman and LaRocco directed me to essentially force Frink not to spend money he had been spending to fix issues in the plant and keep it operating. I explained that I had been informing Frink of the financial status and that I could not control Frink or other external factors that caused Trae Fuels to lose money.

Trae Fuels and EnviroTech secretly documented false performance concerns about me

29. After the June 4 meeting, Aleman drafted an Employee Counseling Form that claimed I had engaged in deficient performance.

30. Even though Trae Fuels's and EnviroTech's policy was to provide the employee a copy of a counseling form (and the form has a place for the employee's signature acknowledging receipt), Aleman did not provide the form to me or even inform me that she had created it. I did not learn of the form until Defendants provided it to EEOC in response to my charge of discrimination.

31. LaRocco and Aleman did not tell me that I was on probation or that I needed to improve my performance. LaRocco and Aleman also did not mention that I had two weeks to improve my performance, (LaRocco, Aleman, Frink, and I discussed how Trae Fuels would operate while Frink was out of town between June 9 and June 26).

32. It is true that several weeks later, LaRocco sent an email (which I didn't learn of until my deposition on October 3, 2019) in which he claimed I was concerned about suddenly being criticized after informing Defendants that I had cancer, however, the term "probation" was the word LaRocco used in the email, not me. No one told me that I was on probation.

33. From my cancer diagnosis through to my termination on August 20, 2014, Aleman, Whyrick, and Whyrick's subordinates engaged in near-constant questioning and testing of me and secretly documented what they claimed were performance concerns.

34. Although Defendants were expending significant effort to document my supposedly deficient performance, they were not sharing these documents with me or explaining what they wanted me to do to improve my performance.

I took periodic leave to undergo treatment but was able to complete my tasks

35. While Defendants secretly created justifications to terminate my employment, I continued performing the tasks of my position

36. Following my cancer diagnosis, I requested periodic medical leave to obtain treatment and then worked a modified schedule that allowed me to attend chemotherapy on Fridays. Defendants permitted me to take this time off and I was able to continue working at least forty hours a week

My supervisors asked about and commented on his cancer diagnosis

37. Following my cancer diagnosis, Trae-Fuels and EnviroTech management asked me questions about my condition with the apparent goal of assessing the effect of my illness on the company. For example, EnviroTech's corporate strategist, Christopher LaRocco, asked me something to the effect of "What do you want to do now, work part-time? Plus, you're a new father?" LaRocco also told me that his aunt or great aunt had died from pancreatic cancer.

When I responded that I planned to work full-time, LaRocco then inquired “Your wife must have good insurance?” I responded that I was insured by EnviroTech’s policy, not my wife’s insurance.

38. On another occasion, Whyrick asked me if my cancer was slow or aggressive, to which I responded that it was slow.

Defendants terminated me on August 20, 2014

39. On August 20, 2014, Defendants terminated me.

The explanations Defendants have proffered for my termination are demonstrably false

A. I never caused Trae Fuels to overdraw its line of credit

40. Defendants claim that one of the biggest problems they had with my performance was that I allowed Trae Fuels to overdraw its line of credit.

41. This allegation is patently false. Trae Fuels never overdrew its line of credit during my employment.

42. What actually happened is that in June 2014, Trae Fuels drew on its line of credit to pay its operating expenses after months of operating at a loss while getting the plant operational.

B. My use of IFS did not cause Trae Fuels to need to draw on its line of credit.

43. Defendants’ claim that my mismanagement of IFS was the reason Trae Fuels had to draw on its line of credit at all is also a total fabrication.

44. On April 30, 2014, I prepared a cash flow analysis for May 2014 that relied on just two cash inflows, one from a customer named Northcrest Forest Products and the other from

a customer named Eco – Pellet. I explicitly mentioned that these payments were based on information provided by salesman Bach.

45. As it turns out, Eco – Pellet failed to timely pay for the pellets Trae Fuels produced for it from April 15 to May 15, 2014, causing Trae Fuels a shortfall of \$515,000.

46. Further, Trae Fuels was generally unprofitable throughout the time period leading up to its draw on its line of credit. Through the first two quarters of the 2013-2014 fiscal year, Trae Fuels had lost more than \$1.7 million dollars.

47. My use of IFS had nothing to do with Trae Fuels's need to draw on its line of credit.

C. My use of the IFS system was proper and I was not "re-trained" on IFS on May 14-15.

48. Defendants' claim that I failed to appropriate use and understand the IFS system are likewise incorrect.

49. I was not re-trained on IFS on May 14-15. Trae Fuels used a standard costing method to value its inventory. Under a standard costing method, a company assigns a set value to a type of inventory based on historical information and past prices rather than the actual price paid for a particular piece of inventory. These standards are used to set prices or evaluate bids and also can be used as a metric to ascertain favorable or unfavorable variances. In December 2013, Trae Fuels established standard costs for its various inventory items based largely on Frink's experience and knowledge, since he had experience in the pellet business.

50. After the company struggled to obtain manufacturing jobs because its prices were too high, LaRocco asked Frink if he had set the standard costs too high and Frink acknowledged that he had probably "padded," the costs. I then evaluated the standard costs against what the

company had actually paid for inventory and confirmed that we had set the standard costs too high.

51. In May 2014, Frink, Walker, Debby Vannest, and I met to discuss re-evaluating the cost standards and modify them. We had a two-hour call with an IFS consultant (I cannot recall whether this call took place on one or two separate days) to ensure that we properly modified the old cost standards to the new cost standards number and utilized the right application in the cost / inventory module of the IFS system.

52. Additionally, while Whyrick and Gohar Wise were in Virginia for other reasons in May 2014, we discussed optimizing IFS by implementing a Purchase Order module. Although this module, and many other optional modules had been shown to me when I first began learning about IFS in November 2013, I had not been directed to use the Purchase Order IFS module. The May 14-15 adjustments to IFS was not a re-training.

53. My use of IFS was appropriate and my periodic questions about how to perform certain tasks were not indicative of deficient performance. Even EnviroTech accounting employees with more time working in the IFS system periodically had questions or issues.

D. I did not inappropriately manage HR files.

54. Defendants' claims that I demonstrated poor performance by inappropriately managing HR files is also false.

55. When Aleman came to Virginia to counsel me the week after I returned from being diagnosed with cancer, Aleman audited Trae Fuels HR files and claimed they were "out of federal compliance," confidentiality agreements were missing, and accounts payable documents were in some files.

56. To the extent these files were not organized in the manner Aleman preferred, this was because she had not trained or directed me on what to include in the files and how to organize documents within the file. Without this direction, I had placed managers' credit card statements in their files and also made notes when Frink approved a payroll advance to an employee, which is what Aleman apparently refers to in claiming there were accounts payable items in the folder.

57. With respect to the files' purported "federal compliance," I ensured all employees had appropriate authorization to work and I9 forms before beginning work, however, on occasions Frink ignored my directives and had people work before they completed their paperwork without my knowledge. While I do not recall if any I9s were actually missing on June 4, 2014, it would only have been for employees that I did not know Frink had hired.

58. In any event, Fran Holliday and I followed Aleman's directives regarding future organization of the files after Aleman communicated her alleged expectations in June 2014. Notably, Aleman had periodically visited Trae Fuels prior to June 2014 and had not said anything about the HR files being managed incorrectly.

E. I did not fail to keep Frink informed of company finances and was appropriately strategic in my role.

59. Defendants also claimed that I exhibited poor performance by failing to keep General Manager Frink aware of Trae Fuels's finances and by not being "strategic," in my role.

60. This criticism was also false, as I had provided Frink detailed cash projections and financial explanations throughout my employment. To the extent I was ever forced to provide Frink a financial document without explaining it to Frink, it was because Frink did not have the time to meet with me, despite my repeated attempts to do so, due to Frink's other responsibilities.

61. I also been appropriately strategic, recommending cost-cutting methods and providing analyses concerning Trae Fuels's production and profitability.

F. My financial reports, production logs, and cash flow analyses did not evidence poor performance.

62. Trae Fuels's claim that my financial reports were inaccurate and demonstrated poor performance are also incorrect. EnviroTech CFO Whyrick had to approve each of my monthly financial reports and reviewed other reports I created regularly. Any questions or corrections Whyrick had were within the normal course of business in deciding how Trae Fuels and EnviroTech wanted to classify certain items, which are typical in any accounting cycle operation and review. My financial reports were always approved.

63. Likewise, the claims that my cash flow analyses were deficient and evidenced poor performance are false. I regularly provided cash flow analyses (which along with Frink, CFO Whyrick and CEO Knoph relied upon).

64. When LaRocco proposed that they use a different format he called a "scorecard" to project cash flow and provided me the format he suggested, I successfully provided that information. The only issue that I had once he was provided the scorecard was my reluctance to include Bach's and Frink's projected sales with new customers to paint a rosier picture of Trae Fuels's finances than was accurate, but LaRocco and other supervisors did not criticize me for this directly.

65. My work with respect to inventory counts and production logs was not deficient either. I repeatedly directed plant employees to keep accurate production logs and inventory counts, and when they failed to do so, I appropriately raised the issue to EnviroTech leadership. My action with respect to inventory and production logs were appropriate.

G. My implementation of the IFS Purchase Order functionality in June 2014 did not evidence poor performance.

66. Another criticism Defendants allege against me is that I failed to implement a purchase order functionality in IFS between May and June 2014.

67. This criticism is a fabrication. Although it is true that my supervisors and I discussed using IFS's purchase order functionality during meetings in May 2014, no one directed me to prioritize the implementation of the system and it was not a high priority task.

68. After May 15, I was immediately out of work for twelve days following my cancer diagnosis and adoption of my son. Then, when I returned on May 27, I had to complete the month-end tasks, catch up on determining the cash position, train the temporary accountant, and deal with drawing on the line of credit to address the issue caused by a customer not timely paying for purchase.

69. I did not have time to implement the purchase order functionality until mid-June, and when Defendants directed me to do so, I immediately took steps to implement the procedure.

H. Various additional unfair and incorrect criticisms

70. In addition to the unfair criticisms explained above, EnviroTech controller Michelle Mills criticized my process for paying accounts payable (AP). This criticism is improper because EnviroTech and Frink set up the procedure by which he would have to sign off on every accounts payable item before it was entered in IFS, and although I wanted to change the procedure, I did not have authority to do so until Envirotech and Frink eventually approved the change.

71. Whryick also criticized me for using a separate spreadsheet to perform this accounts payable process. However, the process I followed was efficient and I completed the work in IFS as requested. I did not disregard any instructions in using both the spreadsheet to

maintain accounting of the accounts payable while I waited for Frink to approve the payment so that I could enter them in IFS. After Whyick and Frink changed the process and the Purchase Order System was implemented, this resolved the majority of the redundancy.

72. Last, Aleman criticized me for failing to get an employee's insurance paperwork in on time for the employee to be covered by insurance in August 2014. This criticism is improper because I had warned the employee of the deadline and the consequences of missing it—the exact same procedure Aleman herself had used with employees that were slow to return their insurance paperwork.

DATED this 11 day of November, 2019

Michael Donaldson
Michael Donaldson

by JS w/ permission

EXHIBIT 2

1 UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

3 MICHAEL DONALDSON,

4 Plaintiff,

Case No.: 3:18-cv-00097

5 v.

6 TRAE-FUELS, LLC, et al.

7 Defendants.
8

9 TELECONFERENCE DEPOSITION OF KEVIN WHYRICK
10 October 30, 2019
11

12 Pursuant to Notice and the Federal Rules of
13 Civil Procedure, the teleconference deposition of
14 KEVIN WHYRICK, taken by Plaintiff, was held at 910
15 54th Avenue #230, Greeley, Colorado 80634, on
16 Wednesday, October 30, 2019, at 9:00 a.m., before
17 Jason T. Meadors, RPR, CRR, CRC, and Notary Public
18 for the State of Colorado.
19
20
21
22

Transcript of Kevin Whyrick, Volume I

Conducted on October 30, 2019

8

1 THE WITNESS: Okay. Yeah.

2 Q (By Mr. Jarrett) Okay. Okay. Do you
3 understand that with respect to some questions that
4 the topics we've noticed and provided that you are
5 testifying with the knowledge of the corporations,
6 EnviroTech, and Trae-Fuels?

7 A Yes. Yes. I was -- you know, I mean, I
8 wasn't involved in everything, obviously, but I'm --
9 you know, I've -- I've probably got the most
10 cross-knowledge of anybody in the company, so I think
11 that's why I was picked to do this.

12 Q Okay. Without telling me anything that was
13 said between you and any attorneys, what did you do
14 to prepare for the deposition?

15 A I looked over my prior stuff that I'd sent
16 out. I mean, it's been five years now or more since
17 a lot of this happened. So went and looked over my
18 notes, as far as, you know, the -- I forget what I
19 called it, my observations around Michael. I think I
20 had gotten something ahead of time on some of the
21 items you were going to address and ask.

22 And then I late, late -- or this morning, I

Transcript of Kevin Whyrick, Volume I

Conducted on October 30, 2019

9

1 got information on a number of items that I think you
2 had sent to Lars. Didn't get a chance to look at all
3 of them, but I kind of skimmed through everything
4 just to get a general feel for what -- what was in
5 there.

6 Other than that, I haven't spent a lot of
7 time on this. I've been traveling six weeks -- last
8 six weeks, so I haven't had a whole lot of time to
9 spend, looking at this stuff.

10 Q Okay. Were you able to speak with anyone
11 other than attorneys?

12 A Just on a general basis. Our attorney,
13 Brian Cross, our in-house, and Lars, but those are
14 both attorneys. I haven't really talked to anybody
15 else about this, other than, I've got a deposition
16 today.

17 Q Okay. Did you review any documents other
18 than your own notes and that, I think you referenced,
19 the observation document that you created? Did you
20 view any other documents?

21 A They had an -- an affidavit or I forget
22 what it was called that I signed --

Transcript of Kevin Whyrick, Volume I

Conducted on October 30, 2019

10

1 MR. LIEBELER: Interrogatories -- sorry,
2 just wanted to interject, interrogatory. I don't
3 think he knows the legal term for it. The
4 interrogatory responses that Mr. Whyrick signed is
5 what he reviewed, and just to make the record clear,
6 I believe everything that he reviewed has been
7 produced in the litigation.

8 A Yeah, and other than that, the information
9 that was sent. Lars, you just sent this morning.
10 Had a bunch of stuff in there. It was a lot. I
11 didn't -- like I said, that -- that item, I just
12 skimmed over, because there was so much in it. I
13 think it was stuff that you had sent to Lars.

14 Q (By Mr. Jarrett) Okay. Did you review any
15 emails?

16 A Well, that had -- that appeared to have
17 copies of emails in there. But --

18 Q You did not have an opportunity to review
19 them yet?

20 A No, I mean, that was a lot of stuff.

21 Q Did you review any contemporaneous
22 documents back from that time period, 2014/2015 time

Transcript of Kevin Whyrick, Volume I

Conducted on October 30, 2019

11

1 period, like financial reports, any sort of, like,
2 the underlying documents that you guys were working
3 on back at that time?

4 A No, I have not.

5 Q Is there anything that we haven't talked
6 about that you reviewed?

7 A No, not that I can think of.

8 Q Okay. So a couple -- one ground rule I
9 forgot that I'm reminded of is that unless I specify
10 otherwise, the period I'm talking about is the
11 period, you know, sort of the start of
12 Mr. Donaldson's employment, around October 2013 until
13 a few months after his employment ended, December 2014.

14 So to the extent the question is ambiguous,
15 I'm asking how EnviroTech does something, how
16 Trae-Fuels does something, what I'm asking is for
17 that time period. Is that understood?

18 A Yes.

19 MR. LIEBELER: Jack, I'm going to interject
20 just to maybe it'll save you a little bit of time.

21 You've alleged in the Complaint
22 Mr. Donaldson has that Trae-Fuels and EnviroTech are

Transcript of Kevin Whyrick, Volume I

Conducted on October 30, 2019

12

1 essentially joined or co-employers of Mr. Donaldson.
2 We stipulate to that fact, so that, you know, at the
3 time that you're asking questions about his employer,
4 the terms are, to us, essentially interchangeable.

5 MR. JARRETT: Okay. That should help.

6 MR. LIEBELER: Yeah, because -- yeah,
7 you've got, you know, it's sort of a dual list right
8 here, and I don't think there's much distinction
9 between the two. So I'm just going to let you know
10 that that's an issue that we are not contesting.

11 MR. JARRETT: Okay. That should help.

12 Q (By Mr. Jarrett) To the extent something,
13 an answer may be different from EnviroTech and
14 Trae-Fuels, I can't imagine a circumstance in which
15 that would happen, but if it comes up today, just let
16 me know, and we'll figure out a way to deal with
17 that, okay?

18 A Okay.

19 Q Okay. So I just want to go through a
20 little bit of background on you personally, just to
21 get some knowledge of who you are. What is your
22 educational background?

Transcript of Kevin Whyrick, Volume I

Conducted on October 30, 2019

16

1 portion of your job. So what -- what is involved in
2 that?

3 A As -- as the -- are you talking about now,
4 in that time frame, or now?

5 Q Let's do both. So if it's changed, let me
6 know, but start off with that time frame, and if
7 your -- what -- if your duties with respect to
8 overseeing finance, accounting have changed, let me
9 know that as well.

10 A Okay. Yeah. So back then, I was more
11 finance, accounting. Had less other stuff. As we've
12 progressed and grown, my roles you know, of
13 accounting finance is maybe 50 percent of time now,
14 used to be 75 back then.

15 But basically, from the accounting and
16 finance side of the world, you know, I'm ultimately
17 in charge of making sure that, you know, we've got
18 accurate and timely financial information. You know,
19 I'm involved heavily with our banking and banking
20 relationships.

21 None of this is the day-to-day stuff. I
22 don't do any day-to-day and back then, I didn't

Transcript of Kevin Whyrick, Volume I

Conducted on October 30, 2019

17

1 either, as far as, you know, AP/AR entry, those kinds
2 of things. You know, I oversee and I run a number of
3 our financial reports, depending on what division or
4 business unit it is. I may run it or we may have
5 someone like a controller, like we did with
6 Trae-Fuels where they're submitting that information
7 to me and our controller. And we're looking it over
8 to make sure it looks good, it's timely, accurate,
9 those kinds of things.

10 I've got our -- another function is
11 treasurer role. I'm a director and an officer, the
12 treasurer. So I oversee cash flow. A lot of our
13 investment accounts. Relationships with those
14 investment accounts. You know, general other things.

15 Overseeing our controller, making sure that
16 she's, you know, doing everything okay, setting her
17 goals. Those kinds of things, to -- to make sure
18 that we're functioning well.

19 We meet on a monthly basis to talk about
20 the company, talk about accounting, how everything's
21 going, you know. Audits, annual audits. We do
22 annual audits, so oversee that. I mean, in general,

Transcript of Kevin Whyrick, Volume I

Conducted on October 30, 2019

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1 that's everything.

2 Strategic side, a lot of my job now is
3 strategy. So as it relates to accounting and finance
4 and financials, I -- I'm involved in a lot of the
5 strategy relating to -- when we form companies or if
6 we do an acquisition or something like that. You
7 know, making sure that everything's on track and we
8 should -- you know, we're getting info like we
9 should, we're set up like we should, those kinds of
10 things.

11 Q Okay. You said AP/AR entries. Is that
12 accounts payable and accounts receivable entries?

13 A Yeah. Yeah. I'm not -- I don't do any of
14 that. But it is accounts payable and accounts
15 receivable.

16 Q Okay. Just trying to make acronyms --

17 A Yeah. We've -- we've got a lot of them.

18 Q Okay. So I just have a few questions, sort
19 of structurally, about Trae-Fuels and EnviroTech.
20 Some of these may be alleviated by the prior
21 discussion with your counsel.

22 So when was Trae-Fuels formed?

Transcript of Kevin Whyrick, Volume I
Conducted on October 30, 2019

19

1 A It was roughly -- I believe it was around
2 July of '13. If I remember right. We might have
3 formed the entity a little before that. Maybe June,
4 July-ish of 2013.

5 Q Who formed Trae-Fuels?

6 A Our in-house counsel at the time was Chuck
7 Dixon. He formed it, drew up the operating
8 agreement, filed the SS-4 with the IRS, those kinds
9 of things.

10 Q Trae-Fuels is an LLC, correct?

11 A Correct.

12 Q Which, of course, that's the acronym right
13 after it, limited liability company, correct?

14 A Right. Yes.

15 Q Who is the managing member?

16 A Managing members were EnviroTech -- or
17 actually, ESI Ventures, which is a subsidiary,
18 wholly-owned subsidiary of EnviroTech. That company
19 owned the -- owned 67 percent of Trae-Fuels. John
20 Frink, who was GM, was also one of the managing
21 members. Roger Knoph, our president of EnviroTech, I
22 believe, was considered a managing member through ESI

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1 Ventures and EnviroTech. I think that was the only
2 two actual managing members. And then myself, I was
3 a manager of -- the accounting manager, actually, of
4 Trae-Fuels.

5 Q Do you know what percentage Frink owned of
6 Trae-Fuels?

7 A Yeah, he was 20 percent.

8 Q So that takes us to what, 87 percent? Who
9 were the other owners?

10 A There were a couple of minority owners. A
11 company out of Fort Collins. I think it's called
12 Creekside Investments. And then a couple of
13 individuals that had -- I think Chris Osborne was
14 one. He has like -- so Creekside had 10 percent.
15 Then I think Chris Osborne has 2. And R.V. Borkert
16 [phonetic] -- Borchardt or Borchhart has 1 percent.

17 And we've since -- we had since bought John
18 Frink's shares of Trae-Fuels out or his membership, I
19 should say. We bought that out -- oh, it's been four
20 or five years ago. So now EnviroTech, through ESI
21 Ventures, has 87 percent of Trae-Fuels.

22 Q Okay. Did EnviroTech -- let me back up.

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1 Can you tell me, generally, what
2 Trae-Fuels' business was during that time period?

3 A Yes. They produced manufactured wood
4 pellets for home heating. Originally, we had -- we
5 had formed the company to take it into Europe for --
6 they're converting coal-powered plants into bio-mass
7 fueled power plants. We later -- we later have sent
8 these pellets out there.

9 But during this time frame, we were
10 manufacturing wood pellets and bagging those for home
11 heating in that New England, mid-Atlantic, kind of
12 northeast region of the country. And those -- those
13 were used for pellet stoves that people have in their
14 homes. They use it for heating instead of, say,
15 heating oil or something like that.

16 Q How many physical locations does Trae-Fuels
17 have?

18 A That was Trae-Fuels' only physical
19 location.

20 Q A manufacturing plant in Bumpass, Virginia?

21 A Yes. Yes. Yeah, we manufactured from raw
22 logs all the way down to the pellet.

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1 Q Okay. And then can you generally describe
2 EnviroTech's business?

3 A EnviroTech is -- primarily, we're in
4 deicing of roads and, you know, surfaces. We do
5 parking lots, sidewalks, those kinds of things. A
6 majority of our business is with government, DOT,
7 City, Department of Transportation, cities, counties,
8 commercial folks like snow -- people that do snow
9 clearing of parking lots, those kinds of things.

10 And in the off-season we do dust control,
11 road stabilization. Similar client base. We also
12 get involved with mining and oil and gas with dust
13 control.

14 Q Did EnviroTech own other subsidiaries, like
15 outside its normal business, like Trae-Fuels at that
16 time?

17 MR. LIEBELER: Objection. Relevance. It's
18 a 30(b)(6) witness on Donaldson's termination. So
19 owning other businesses is way outside the scope of
20 the 30(b)(6) and it's not relevant to the lawsuit at
21 all.

22 Q (By Mr. Jarrett) Okay. You can still

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1 answer the question with your personal knowledge.

2 A I'm trying to remember during that time
3 frame. We had -- we had formed an entity to
4 purchase -- I believe it was prior to that, to
5 purchase properties related to a plant facilities in
6 Minnesota and Nevada.

7 So basically, we formed an LLC to purchase
8 the land for those -- those particular investments.
9 The land and the equipment. And then we built plants
10 for our dust control and deicing businesses at those
11 locations.

12 I believe that was it during that time
13 frame.

14 Q Okay. How many employees did Trae-Fuels
15 have?

16 A During that time frame, that was early in
17 our -- that was the first year, really, of
18 Trae-Fuels. So we probably averaged maybe 15, 20
19 employees at that time. We weren't -- we weren't
20 fully up to max production during Michael's time at
21 Trae.

22 Q When did Trae-Fuels start production? You

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1 said it was formed July of 2013. When did Trae-Fuels
2 start making product?

3 A We had to -- we had to kind of -- one, the
4 plant, we bought it, and so we had to get it
5 operating again because it had been shut down. So we
6 got it operating. We kind of streamlined it a little
7 bit. So there was probably six months of that. So
8 probably, you know, early 2014, I would say, maybe
9 January 2014 is when we actually started producing
10 pellets.

11 Q Okay. During that time period, how many
12 employees did EnviroTech have?

13 A EnviroTech was pretty consistent. We
14 believe probably were in that 95 to 105 range.

15 Q Did the other entity that you mentioned
16 have any employees?

17 A No. No. It just owned the land,
18 properties.

19 Q Okay. How was Trae-Fuels funded?

20 A It was initially funded -- the acquisition
21 of the plant, was initially funded by the members.
22 And then we had loan facilities that we had gotten

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1 some longer-term, I believe they were five-year loans
2 with our bank, UMB bank. And we used those for
3 additional equipment that we had to install for the
4 plant and property. Any items to fix up those kinds
5 of things. And we had a line of credit also with the
6 bank, so those were our funding mechanisms at that
7 point in time.

8 Q So who was entitled to Trae-Fuels' any
9 profits or loss?

10 MR. LIEBELER: Objection to the scope. You
11 know, Jack, I think you're entitled to some
12 background of the witness. We've been goings for 30
13 minutes right now. We have an agreed on-upon list of
14 topics on the 30(b)(6) notice and we've hit zero of
15 those 21 topics. Who funded. It's not relevant at
16 all to any issue in this case. And it's beyond the
17 scope 30(b)(6).

18 I'll allow him to answer this last question
19 but I'd like to move into the topics for which the
20 deposition was originally noticed.

21 MR. JARRETT: This is on the topic of the
22 relationship, contractual and otherwise, between

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1 Trae-Fuels and EnviroTech.

2 MR. LIEBELER: No, it's not. It's about
3 profits of Trae-Fuels which has nothing to do with
4 the relationship between an employment discrimination
5 case between EnviroTech and Trae-Fuels, who has the
6 profits has nothing to do with any of the issues with
7 the control or ownership, and direction of the
8 employees.

9 Mr. Whyrick, you can answer the question.
10 If you need it read back or --

11 THE WITNESS: Yeah, can you repeat it
12 again?

13 Q (By Mr. Jarrett) Yeah, so what entities
14 were entitled to Trae-Fuels' profit or loss?

15 A That -- that would be the members that I
16 mentioned earlier. EnviroTech, Frink, and the
17 others.

18 Q Did EnviroTech have access to Trae-Fuels'
19 bank accounts?

20 A Yes, we did. We -- they were under the
21 same bank. Separate entity, separate accounts, all
22 that stuff.

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1 Q Okay. So let's jump forward a little bit
2 to Mr. Donaldson's employment directly.

3 Who -- was EnviroTech involved in
4 Mr. Donaldson's hiring?

5 A Yes. Our HR manager, Beth Aleman, I
6 believe we had Beth, who worked for EnviroTech, I
7 think I was on the interview, Michelle Mills, maybe
8 Chris LaRocco, who's our business development, kind
9 of corporate strategy manager, and then John Frink on
10 the -- on the Trae-Fuels side, and I can't remember,
11 but maybe Clayton Walker was also in that
12 interview -- in those interviews.

13 Q Okay. Who provided Mr. Donaldson training,
14 if anyone?

15 A There were a lot of us. We brought him out
16 here to Greeley. We had a third party IFS vendor. I
17 think their name was Kogga [phonetic] at the time.
18 They -- we brought Michael in here for a week. Had
19 Kogga's financial BA, who is an IFS expert in the
20 financial side, the financial side of IFS. We also
21 had the manufacturing -- they call them BAs. I think
22 they're business analysts or something that they call

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1 them.

2 So we had the manufacturing person. We had
3 the -- the financial person from Kogga. We had
4 myself, Michelle Mills, Gohar Wise, Debby Vannest,
5 who has a lot of experience with costing, those kinds
6 of things, in IFS. There was one other. I can't
7 remember now. I think that's it. I seem to remember
8 someone else, but that's everybody.

9 So we -- we brought him out here for a
10 week, we trained him. He went back. I know that
11 Michelle and Gohar and even myself had regular
12 meetings with Michael on IFS-related items, as well
13 as our payroll system, which is -- I think was Paycor
14 at the time. We sent Michelle, myself -- I didn't go
15 out as often as they did, but I went out there and
16 helped train on some things and talked about setup
17 and those kinds of things.

18 We sent Michelle, Gohar, Debby Vannest went
19 out there multiple times to help train. Beth Aleman
20 went out there several times for the -- for the HR --
21 you know, HR file-type stuff. There was a lot of
22 training involved for Michael on all different types

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1 of things.

2 Q Okay. So when did the week-long training
3 occur?

4 A That was -- I want to say that was maybe a
5 week or two into his employment. We brought him out
6 here. I think we gave him a couple of weeks to get
7 the lay of the land out there, and then we brought
8 him in to Greeley.

9 Q And you mentioned that training consisting
10 of mostly about IFS; is that correct?

11 A Yeah, a lot of it was IFS. We did do some
12 non-IFS stuff as well, because he were here. So, you
13 know, there was, like I said, the payroll system
14 through Paycor, you know, how to set up employees
15 when -- when they're hired, how to, you know, do
16 payroll runs and those kinds of things.

17 Q Other than IFS and Paycor, what other
18 training was provided during that week-long period?

19 A Trying to think if there were other
20 systems. Obviously, there was a lot of work done in
21 Excel. Michael tended to like Excel as well. But
22 there wasn't anything, like, Excel training. It was

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1 more -- it was probably more related to financial
2 information that we wanted, you know, how to -- cash
3 flows. The manufacturing costing formulas.

4 You know, just things that relate to
5 financial information, like score cards and those
6 kinds of things that we wanted to see. There was a
7 lot of that training. It wasn't in a system,
8 necessarily. It was more what we want to see, the
9 items we have in Excel, those -- those different
10 things that we look for.

11 Q Okay. So other than that, IFS and
12 Paycor -- let me restate that.

13 So he trained with IFS. He was trained on
14 payroll system, which I think is called Paycor, and
15 then he was trained with respect to financial items
16 that aren't in a particular system, but you guys use.
17 Was there any other training he was provided during
18 that week?

19 A Probably not during that week.

20 Q Okay. Then you mentioned that Ms. Mills
21 is -- is Gohar Wise a woman?

22 A Yes.

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1 Q Woman. Okay. Ms. Wise, Ms. Mills, and you
2 had some meetings with Mr. Donaldson later following
3 that period; is that correct?

4 A Yeah. I mean, that was -- that would have
5 been early in his career, so -- or in his time there.
6 So we -- you know, we met with him continuously from
7 that point on, whether it be over the phone. We had
8 set up weekly meetings with him on training
9 questions, anything like that, and as I mentioned, we
10 sent people out there numerous times to help train.

11 Q Okay. When did you start weekly meetings
12 with him?

13 A I think we started them fairly early, but
14 we didn't -- we didn't get -- we got other people
15 involved as needed. And then when we started
16 noticing we were having issues with Michael taken --
17 you know, understanding what he needed to do and all
18 the information, how to do it, we involved more
19 people, like Chris LaRocco. He's kind of a financial
20 analyst type person, and business development.

21 So he had a lot of good score card
22 knowledge, and he was trying to help Michael with

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1 that. We brought -- we brought others in as needed.
2 But I believe it was probably -- it was probably a
3 couple of weeks after our original training that we
4 started doing those.

5 Can't -- I can't remember if it was weekly
6 or monthly at that point. I know we went to weekly,
7 but I don't remember if it was biweekly or monthly,
8 early on. That part, I don't remember.

9 Q Were these trainings or were they just
10 meetings about his work? What -- please describe,
11 generally, what these meetings were.

12 A It was all of the above. So training, if
13 he needed it. You know, if he had questions on
14 things. How to do things, which would be training.
15 Discussions on, you know, we had numerous discussions
16 on errors that he was making. And trying to help him
17 understand how to correct those and not do them
18 again.

19 Michelle had a lot of calls. A lot of
20 those discussions included Michelle talking to
21 Michael about, he had -- he started using redundant
22 systems where he was doing things offline and then

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1 Trae-Fuels or EnviroTech?

2 A No, we -- we've since shut the plant down,
3 so it's in a shuttered status, I guess. We're in the
4 process of selling the plant. It's been shuttered
5 probably for nine months to a year. So Clayton, once
6 we shuttered that, Clayton got a different job.

7 He does -- he does consult, though. We
8 were -- we were running -- we had quite a bit of
9 extra inventory in the plant. So Clayton got
10 involved in some of the projects, even though he was
11 working for another company. And he still does
12 today, if we have, you know, people have questions or
13 things that we need from a manufacturing standpoint.

14 Q Okay. Is Ms. Mills still employed by
15 EnviroTech?

16 A Yes.

17 Q Who made the final determination to
18 terminate Mr. Donaldson?

19 A It was -- it was a group -- group of us. I
20 think it was probably myself, Beth, John Frink,
21 and -- I think that was probably it. We -- we had a
22 discussion -- we had several discussions about

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1 Michael and that he was having a really hard time
2 grasping things.

3 And so we -- we kind of collectively got
4 together and said, It's just not working. He's not
5 getting it. We're not getting the info we need. We
6 want to ramp this thing up. We're going to do more,
7 not less. So that group decided, Yeah, we just need
8 to let Michael go.

9 Q Did you replace Mr. Donaldson?

10 A We did. We hired a -- a controller out
11 there. I can't remember the individual's name. But,
12 yeah, we did replace him.

13 Q How long did that replacement work for
14 Trae-Fuels?

15 A He was there -- man, I'm not a hundred
16 percent sure on the timelines. I would say another
17 year or so. And there was a point in time where
18 things started slowing down and we let him go. And
19 we decided to absorb that and actually have Gohar
20 Wise, who's our assistant controller, we promoted her
21 to controller.

22 And we had her become the controller about

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1 a year -- year, year and a half later, maybe, I
2 think. And she went out there half-time and was here
3 half-time, and she was the controller until we shut
4 it down.

5 Q Okay. What was Mr. Donaldson's job duties
6 during his employment?

7 A Mentioned a lot of them. He did -- he was
8 in charge of the financials, making sure they were
9 accurate and timely. That included making sure items
10 were input directly into the system. We had an
11 individual that worked in the office, did the scale
12 house work. She did a fair amount of input.

13 So he -- I don't think he over -- I don't
14 think he managed that person. I don't remember, to
15 be honest, but he overseen to make sure all of that
16 was accurate and timely. He was in charge of
17 payroll. Making sure payroll was correct and timely.
18 He was in charge of the HR files. General -- general
19 strategy items, like I talked about, relating to
20 financial score cards, cash flow statements, getting
21 things ready to deliver to the bank. The bank
22 requires monthly reporting because we had loans with

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1 them.

2 So he was in charge of putting that
3 information together. He also was supposed to be the
4 one that got with John and the management team and
5 went over the financial information, discussed
6 manufacturing efficiencies and things from a
7 financial standpoint. He was in charge of that.
8 Basic controller duties, as we kind of define them.

9 Q He was in charge of the financials to make
10 sure they were accurate and timely. He was in charge
11 of payroll. Again, making sure it was accurate and
12 timely. He was in charge of HR files. He was in
13 charge of strategy, which involved cash flow and
14 score cards. And he was responsible for going over
15 the financial information with, I guess, Frink? Is
16 there anything else?

17 A Frink and the -- and the management team,
18 which was the EnviroTech group.

19 Well, I mean, I could sit here all day and
20 list things within that controller duty. You know,
21 inventory management's one of them. It's going to be
22 hard for me to list. Under a controller's duties,

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1 it's all financial-related items for that company,
2 which includes manufacturing costing, it includes
3 inventory management, those types of things as well.

4 So to sum it up into a brief group of
5 things, I would just say, it's all financial related
6 items within Trae-Fuels.

7 Q So did Mr. Donaldson have the -- was he
8 responsible for deciding how much -- how many pellets
9 to produce or was that someone else's job?

10 A No, a lot of that was driven --
11 market-driven, first of all. So customers, you know,
12 who are we selling it to, what's their demand
13 schedule. Michael was involved, but he wasn't the
14 one running the plant, so that team I mentioned
15 earlier, John, Michael, Clayton, they kind of
16 strategized in what should our production be, how
17 much are we going to make per month, how many shifts
18 do we need, those -- those things.

19 So he wasn't directly saying, We need to
20 make 5,000 tons of pellets this month, but he was
21 involved in helping strategize in that.

22 Q Yes, that's what I'm trying to understand.

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1 I get that he's responsible for financial reports and
2 accurate input. Did he have any response -- what I
3 don't understand is what the controller is
4 responsible for as far as, like, strategic decisions.
5 What is that?

6 A It -- as I mentioned with my job, you know,
7 a majority of it is going to be financial, cash flow,
8 inventory management protocols and efficiencies
9 within the plant related to costing. But also
10 there's a strategy part as being a member of
11 management for that company that is beyond financial.

12 It's -- it's more so helping strategize
13 with that management team to say, Okay, we've got
14 this customer base. We need to -- you know, we're
15 not -- we're not making money at this level, where
16 Michael would need to be in charge. He never did get
17 to that point where he could say that.

18 But it's -- the controller's role to say,
19 We need to be producing this much in order to be
20 profitable. And therefore, do we have the customer
21 base, you know. Who's out there. I think Christian
22 Bach was the salesperson at the time. Who's out

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1 there selling? Is that customer base going to be big
2 enough in order for us to be profitable and be most
3 efficient from a plant standpoint.

4 And then -- and then you've got to
5 determine -- and that was -- that management team has
6 to determine, how many shifts do we need, you know.
7 Is it two. Is it three. If each shift -- and
8 Clayton had a lot to do with that and so did John
9 Frink, because he ran a wood pellet production
10 facility.

11 But Michael's role, the controller's role
12 is to be involved in a strategic standpoint to say,
13 you know, Hey, this -- this isn't going to make us
14 money. Cash flow is going to be tight. Running
15 models, you know, cash flow models, pro formas, those
16 types of things that are strategic in nature to make
17 sure that you understand as a business what you need
18 to do to be profitable.

19 And those were -- those were the strategic
20 expectations, not only from a controller, but from a
21 manager within the company.

22 Q Okay. So Mr. Donaldson did not have

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1 experience in particular with pellets, correct?

2 A No, I do not believe so. He -- he
3 maintained he had experience in manufacturing
4 settings, but not with pellets.

5 Q So your expectation was that he would
6 report -- get to look at financial information and
7 determine whether a course of action would be
8 profitable or not? Is that right?

9 A Yeah, based on financial models, cash flow,
10 expectations, volumes.

11 Q So what information would go into those
12 cash flow projections?

13 A Inventory movements -- sorry?

14 Q Just, general. I don't need like
15 super-specific.

16 A Okay. Ins and outs, so cash flow models.
17 You try to predict your cash in, cash out. So that
18 would be sales and collection of sales coming in.
19 And then cost of goods. Material costs. Expenses.
20 Things like payroll going out. And when you're a
21 startup like that, you have to project that on a more
22 frequent basis.

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1 So you're projecting out a year, but you're
2 also projecting out a week, and sometimes daily.
3 Depending on the situation.

4 Q Are those projections relying on sales
5 numbers?

6 A More so -- sales, yes, but more so
7 collecting those sales. So, you know, the actual
8 money coming in the door or in the bank account.
9 You're running the sales, but what's your time frame
10 on collecting that money. Because they were on --
11 you know, the customers were not cash customers.
12 They were customers with terms.

13 So he would work with the salesperson. He
14 would work with the plant. We would work with John
15 Frink to say, Okay, I'm trying to project the cash
16 flow out a year, a month. And Michael struggled with
17 this concept. I mean, this is basic cash flow
18 principles. He struggled a lot on that.

19 But basically, what you need to do is
20 you -- is you look out a month, and you say, Okay,
21 what do we think we're going to have in demand from
22 sales and do we have the inventory. Is our cash

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1 going to be coming in based on collecting that? And
2 then how much are we going to be spending in cost of
3 goods and payroll and expenses? And does that number
4 look positive or negative? And if not, what do we
5 need to do to -- to make that number positive.

6 And obviously, if it was negative, you have
7 to go to management well ahead of time and say, Look,
8 our cash flow projections are negative. We've got to
9 -- we've got to find another source of income,
10 assuming you didn't have enough revenue coming in.

11 Q Isn't that cash flow relying on analysis of
12 potential sales?

13 A Correct. Yeah, the further out you look,
14 the more so, yes. The closer, no, I mean, you're
15 pretty well knowing what you sold if you're looking
16 at it on a daily or weekly basis. You're looking at
17 accounts receivable and how quickly they're going to
18 pay.

19 Q And -- all right. So you've got an
20 accounts receivable at work already done, and you
21 know you're going to get some -- paid for that at
22 some point. Do you use that information to decide

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1 whether, you know, how the plant should operate over
2 the next month? Accounts receivables determines how
3 the plant should operate?

4 A Not current. The future. So in the case
5 of Trae-Fuels, and I -- my timelines, I don't
6 remember for sure which customers we had back then,
7 early on. But we had one major customer that took a
8 majority of our pellets. And they had demand. They
9 would forecast their demand.

10 Because they were selling pellets into the
11 big box stores like Lowe's, Home Depot, you know,
12 those large home stores. And different grocery
13 stores, those kinds of things, Ace Hardware. And
14 they were sort of a broker, pellet broker, in that
15 industry. And they were a majority of our revenue.

16 So based on their forecasts, you could --
17 you could say, Okay, revenue should be coming in
18 based on receivables in these months. So in the
19 winter months, they're going to have a higher demand
20 than they are in the summer, because they're home
21 heating.

22 So you could look at that and say, Okay,

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1 they're going to need 5,000 tons in January, 3,000
2 tons -- or 6,000 tons in February, whatever the
3 numbers were. And you would say, All right, we know
4 we're going to charge them this, therefore, our
5 accounts receivable and our cash in should be X. And
6 as you got further down and closer to that time frame
7 on a monthly basis, you had even better information
8 from the customer.

9 They would be saying, Yeah, we're going to
10 -- we need 3,000 tons within the next two weeks.
11 Okay, so you know, you're going to go billing them
12 for 3,000 tons in the next two weeks. Therefore, if
13 they pay on a net 30 basis, you're going to get cash
14 at that point in time. So you use all that
15 information to understand what that cash in looks
16 like.

17 Q Okay. You mentioned financial reports.
18 What responsibility did Mr. Donaldson have for
19 generating financial reports?

20 A He had -- first and foremost, he needed to
21 make sure they were accurate before he sent them. So
22 he had to watch out -- you've got an income

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1 statement, balance sheet, cash flow statement that we
2 just talked about, bank required income statement,
3 balance sheet, inventory reports, receivable reports,
4 and what they call a bank borrowing base, because we
5 had a line of credit.

6 He had to make sure all that was accurate
7 and produce it in a report format. So he would -- he
8 would run those reports and export them into Excel, I
9 believe, and then submit those both to us first,
10 because we wanted to make sure they were accurate
11 from our standpoint, you know, from a big picture --

12 Q What do you mean by --

13 A Go ahead.

14 Q Sorry to break in, but what do you mean by
15 us?

16 A It would have been Michelle, myself,
17 mostly. We would be like a final check before he'd
18 send it to the bank. And that's where we started
19 seeing kind of some issues with it, where some stuff
20 was missing and we'd be, like, hm. We don't -- we
21 didn't do the day to days, but we seen -- when we've
22 been doing this long enough, we see -- we have an eye

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1 They're all considered HR files, but they may not be
2 in the same file.

3 Q Okay. You're not sure about that, though?

4 A No.

5 Q Did Mr. Donaldson have any responsibility
6 for hiring employees?

7 A He -- he was involved with the group to
8 hire them. So it would have been Beth Aleman,
9 Michael, and John, and then whoever else was hiring.
10 If it was for the plant, it would have been Clayton.
11 So it wasn't one individual that would say, Yeah, I'm
12 hiring this person. We have a group that interviews
13 them and does -- you know, does all that stuff, and
14 then they kind of decide as a group, Yeah, that
15 person's good.

16 And it varied. It may not have been
17 involved in everything, because there was a lot of
18 hiring going on at the time. So he might have only
19 been involved in certain types of hirings.

20 Q Okay. Do you know if he had any
21 involvement in terminating employees, making a
22 decision to terminate employees?

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1 A He might have had a say, but I doubt he was
2 the final call, unless it was someone that was under
3 him. Typically, it's the supervisor -- pardon?

4 Q I'm sorry. I cut you off. You can finish.

5 A Typically, it's the supervisor and HR that
6 gets involved in that decision. And sometimes their
7 manager.

8 Q Did Mr. Donaldson have any subordinates?

9 A I don't remember who was under him. I --
10 there was a temporary employee at -- at one point
11 that he -- said he didn't need, but that person would
12 have been under him. I can't remember if Fran was
13 under Michael or not. I don't remember.

14 Q Who is Fran?

15 A Fran was the scale house office manager
16 person that kind of managed the ins and outs. She
17 also was involved in putting information into IFS for
18 billing purposes.

19 Q What do you mean by scale house?

20 A At this facility, there were a lot of
21 trucks coming and going. Logs trucks coming in.
22 Pellet trucks going out. And there's a scale. And

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1 so she would -- she would weigh them, document it,
2 all of that stuff, as they came in and went out.

3 Q Okay. Did Mr. Donaldson have signing
4 authority on accounts payable checks?

5 A No, I don't believe so. I think it was
6 John Frink, myself, or Roger Knoph.

7 Q Did Mr. Donaldson have the authority to
8 make a wire transfer without approval?

9 A The way -- the way wires work is you
10 initiate the wire. So I think he had the ability to
11 initiate a wire to say, Hey, we need to send this,
12 basically, that's all the info that goes into
13 initiate it, and then it required a secondary
14 approval to actually send it.

15 Q Who was authorized to make that secondary
16 approval?

17 A Typically, it was John, myself. I believe
18 Michelle had some authority on that as well.

19 Q But someone other than Mr. Donaldson had to
20 approve a wire transfer.

21 A Yeah, you can't -- you can't have someone
22 submit it and authorize it. That's a breach of

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1 controls. So you have -- he would do all the
2 submittals and someone else would authorize it. It's
3 all -- it's all through the bank's website.

4 Q I understand. Did he have the authority to
5 approve someone else's submittal?

6 A I don't remember. I don't -- maybe up to a
7 certain dollar amount. I can't recall a hundred
8 percent, though.

9 Q Did Mr. Donaldson have the authority to
10 draw down the line of credit?

11 A Draw down. It's a sweep system. So what
12 it -- what it would do is, it would sweep cash that
13 come into the account toward the line. If we were --
14 if we were borrowing money, let's say, if we got cash
15 into the account, it would automatically sweep into
16 the line of credit. And if we had more cash going
17 out than -- could the -- the bank accounts, what's
18 called a zero balance account, so it would sweep in
19 and out, based on check draws and payments that came
20 in. So he wasn't physically calling and drawing down
21 on it. His -- should I elaborate or is that all you
22 needed?

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1 Q I'm just trying to figure out who had the
2 authority to, I guess, borrow against or draw down
3 the line of credit.

4 A As I mentioned, it wasn't a person calling.
5 It was a sweep system. Michael's job was to make
6 sure that we didn't overdraw that line of credit or
7 go above our borrowing base. But there wasn't
8 someone that had authority to do it, because it
9 automatically sweeps, you know what I mean?

10 Q Okay. I think I understand.

11 When -- I guess -- did you have the
12 opportunity at any point to review, let's say, a
13 check that -- actually, strike that. Sorry.

14 So what, if any, decision-making authority
15 did Mr. Donaldson have with respect to Trae-Fuels'
16 committing money -- paying money out?

17 A He -- he was the one that would say,
18 who's -- Here's who we should pay, based on the check
19 runs. He would -- he would do the check runs. You
20 know, he would be -- basically be -- be the person
21 that monitored who needed to be paid when. And how
22 much. Based on the -- the aging, those payable

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1 agings and their due dates and those things.

2 So he'd be -- he would be in charge of
3 running those checks, and then either cutting the
4 checks for them to be signed. It -- normally, you
5 don't -- again, from a segregation of duties
6 standpoint, you don't want the same person that's
7 cutting the check, signing the check. I mean, that's
8 any company, not just us.

9 But so he would cut the checks, get them
10 all ready, say, here's who needed to be paid, and he
11 would either initiate the wire or ACH, or cut the
12 check, and someone would either approve the wire ACH
13 or sign the check. Which typically, because of
14 the -- the -- John Frink was the person that was
15 there, he would be the one signing checks.

16 But we weren't there physically, so we
17 couldn't -- it wouldn't be cost-effective or timely
18 to have us try to sign them. So John signed those
19 checks. We would do the wire approvals and those
20 things back here, Michelle and myself.

21 Q Okay. So were there any decisions that
22 Mr. Donaldson could make to commit Trae-Fuels' money

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1 without approval of a supervisor?

2 A Yeah, I mean, if -- if it was due, he -- he
3 would make that decision. We've got to pay this, and
4 we're running, you know, I've got to make sure that
5 this check's cut and signed so we can pay this
6 vendor. So, yeah, I mean, he was in charge of that.

7 He was also in charge -- he didn't
8 physically sign the check, but he was the one that
9 said, We have to pay these things. It wasn't John or
10 myself or Michelle that -- that decided who we paid
11 and how much. It was Michael's job to do that.

12 Q But these obligations that you guys paid,
13 they were incurred -- what are these, business
14 expenses?

15 A Yeah, it would be anything. You know,
16 logs -- logs that come in that we've got to pay for,
17 inventory, expenses, payroll, any of those things
18 that require you pay as a business.

19 Q Right.

20 A The loan -- the loans.

21 Q So as far as operational items,
22 Mr. Donaldson was not responsible for deciding how

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1 many logs to buy, correct?

2 A Correct. No. He wasn't in charge of that.

3 Q And he wasn't responsible for deciding
4 which obligation that Trae-Fuels incurred, right?

5 MR. LIEBELER: Objection to the form of the
6 question. Can you rephrase or if it's unclear, ask
7 him to do so, Kevin, but if you understand it, you
8 can answer. I didn't understand it, so why don't you
9 rephrase it.

10 Q (By Mr. Jarrett) Do you understand the
11 question?

12 A Well, I mean, it's pretty broad.

13 MR. LIEBELER: Objection. Broad. Why
14 don't you just ask him the question. It was really
15 confusing. Jack, just start it and break it down
16 into pieces.

17 Q (By Mr. Jarrett) What obligations did
18 Mr. Donaldson have the authority to -- sorry.

19 I mean, what financial obligation did
20 Mr. Donaldson have authority to enter into on behalf
21 of Trae-Fuels?

22 A It would have been payroll. And he was the

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1 one -- he would have been in charge of making sure
2 all the clocks, time, and things like that, and
3 overtime was correct, so he -- he had the authority
4 to say, Okay, here it is. I need this to be correct
5 and I'll pay it. Anything relating to the accounting
6 side of things.

7 So if he brought in a temp or they -- you
8 know, if he needed to bring in -- we had people --
9 people that would come in and measure the inventory,
10 for instance. Michael would be in charge of -- would
11 have been in charge of, you know, finding some of
12 those people and bringing them in to -- to help them
13 with certain things relating to either year-end or
14 accounting or those things.

15 So his -- his authority was mostly around
16 the accounting side, including payroll and any
17 accounting function, you know, hiring a -- an
18 accounting firm to help with certain things. He --
19 he had the authority to do those types of things. He
20 wasn't the one, though, that was in charge of
21 determining how much we produce, how many logs we
22 brought in. How -- you know, whether we brought in

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1 an engineer to help. Those -- those were functions
2 that other departments had. His was limited to his
3 accounting and financial functions.

4 Q Do you know whether Mr. Donaldson ever
5 hired a temporary accountant to help?

6 A I don't remember the timelines there. I
7 know we brought in -- originally, we brought in
8 someone to help him. I don't think -- I don't think
9 from a timeline perspective he had brought anyone in
10 to help there, but he might have been involved in
11 bringing someone in to help in the office and things.
12 I just don't recall the timing of it.

13 Whether he -- he got involved in actual --
14 person to help with accounting. I know the one --
15 the one that's referenced in all the documents, he
16 and I had exchanged emails about bringing that person
17 on, and I said, Hey, do you need some help? I think
18 it was when he announced he had pancreatitis, and I
19 had emailed him and said, Do you need some help? We
20 can bring in a temp from Account Temps. And he said,
21 Yeah, it sounds like a good idea.

22 So we kind of decided together on that one,

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1 and then later, he said he didn't need her. But that
2 one, he did help on. I ended up doing -- calling
3 them and getting them out there, because he was -- he
4 was, you know, in the hospital.

5 Q Okay. And as far as -- so you don't
6 recall, other than the involvement you just described
7 with the one temporary accountant to help him.

8 A Yeah.

9 Q You don't recall if he hired anyone,
10 correct?

11 A No, I don't recall.

12 Q And then with respect to -- you said
13 payroll, he was responsible for ensuring that the
14 payroll was correct. Did he have any responsibility
15 for scheduling workers' hours or was that someone
16 else?

17 A That would have been the plant. Like I
18 said, I don't know if he overseen anybody in the
19 office. If he did, he would have been responsible
20 for their hours. But I don't -- I don't remember
21 whether he -- he was Fran's supervisor or not.

22 Q Okay. So we've talked about the practices

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1 and procedures that EnviroTech and Trae-Fuels used to
2 address employee performance, to the extent there
3 were any. So what is -- what was Trae-Fuels' policy
4 for addressing deficient employee performance?

5 A I'm not going to know all the specifics. I
6 would just be highlighting general items. But I'm
7 not the right person to ask on, you know, what was
8 the policy at that point and what were all the
9 procedures.

10 Q Do you know whether there was like an
11 established policy for addressing employee
12 performance at Trae-Fuels?

13 A Yeah, I believe so. I wasn't -- I wasn't
14 over HR at the time, but I believe they had
15 procedures around counseling forms, write-ups, you
16 know, when you talk to an employee, you know, you'd
17 do a counseling -- a counseling form. Those types of
18 things.

19 I don't remember the specifics, though, and
20 I'm not real sure on those, because I didn't manage
21 HR back then. It was Chuck Dixon that did.

22 MR. LIEBELER: I'll just make a

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1 for an employee is necessary?

2 A For --

3 MR. LIEBELER: Objection to form. I want
4 to be really, really clear. You keep using the
5 present tense and I want to make sure those questions
6 are going to the past tense.

7 And also, if you're making a distinction
8 between Trae-Fuels and EnviroTech, the directive
9 needs to be clear about what the questions are, so
10 reform your question so it's more specific, please.

11 Q (By Mr. Jarrett) So every single question
12 is about the time frame, unless I say otherwise, and
13 every single question, if there's a difference
14 between Trae-Fuels and EnviroTech, I've asked to you
15 identify that difference.

16 MR. LIEBELER: Okay.

17 Q (By Mr. Jarrett) The question is, who
18 determined that a counseling form is necessary.

19 MR. LIEBELER: Okay. You asked previously
20 about Trae and the line of questions you just asked
21 about was EnviroTech, because he already testified
22 that he didn't know what the policies were with

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1 respect to Trae.

2 And so if your question now is EnviroTech,
3 let's say it's EnviroTech so that it's clear for the
4 record.

5 Q (By Mr. Jarrett) All right. This question
6 is to both. Who determined that an employee
7 counseling is necessary?

8 A Are you talking in general or about
9 Michael?

10 Q In general. So --

11 A So Trae, I don't know --

12 Q So --

13 A Trae, I don't know. Because I mentioned
14 that earlier. EnviroTech, it would their supervisor
15 and HR would discuss and sometimes that supervisor's
16 manager would be involved. They would -- they would
17 determine that.

18 Q Okay. And then you mentioned the employee
19 counseling form. What is the purpose of the
20 format -- so I guess, did you only know about
21 EnviroTech, so you can say that, and let me -- let me
22 know.

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1 A The purpose is to let that employee know
2 that they're not performing well in their job duties.
3 And then specifically what those things are and how,
4 you know -- it needs to be a conversation on how to
5 correct that.

6 Q Is an employee counseling form shown to the
7 employee?

8 A Yeah, it is.

9 Q Is it signed by the employee?

10 A I don't recall on that.

11 Q What happens to an employee counseling
12 form? Is it placed in the file? Actually, is it --
13 I think you testified it was shown to the employee.
14 What happens to the employee counseling form after
15 that?

16 A For EnviroTech, I believe it -- I believe
17 it's put in their file during that time frame. Trae,
18 it should have been the same process, but I can't
19 testify to that.

20 Q Okay. So you don't know what would happen
21 with the employee counseling form at Trae, correct?

22 A Correct. Not a hundred percent.

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1 Q Okay. Other than employee counseling
2 forms, write-ups, and then you noted like, a
3 termination, are there any other documents that
4 EnviroTech used regarding performance at the time
5 frame?

6 A Not that I recall.

7 Q And then same question for Trae-Fuels. Do
8 you know -- do you know the answer for Trae-Fuels?

9 A No. I wasn't involved in any of those
10 things at Trae.

11 Q Okay. Does EnviroTech have any, like,
12 formal meetings -- so let me rephrase this.

13 Did EnviroTech do, like, annual reviews or
14 any other types of nondocumentary performance
15 evaluations?

16 A Yeah. Annual reviews were documented. Or
17 are. And back then, they were. They were twice a
18 year, and it was the employee and the manager would
19 sit down and go through a form. One -- basically, a
20 form that had categories, like, communication and
21 teamwork and those kinds of things. And they would
22 be ranked on a scale of, I believe, 1 to 5 back then.

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1 And then they also have a section for the
2 goals for that employee, and that would be discussed
3 as to, Okay, here's how you did on this. Here's how
4 you did on that. And we did that -- we did that
5 twice a year at EnviroTech.

6 Q What time period --

7 A It would have been -- it would have been --
8 March -- we're on a fiscal year, October through
9 September. So it would have been -- they would have
10 been done in April for the half year and in October
11 for the full year.

12 Q Okay. Did Trae-Fuels have annual reviews?

13 A I don't remember. I'm sure we were in the
14 process of installing them. But as this was the
15 startup, I don't recall whether we got to that point
16 during that time frame or not.

17 Q So you don't know whether Trae-Fuels --

18 A No.

19 Q -- did employee performance reviews during
20 that time period?

21 A I don't recall.

22 MR. LIEBELER: Kevin, just to remind you to

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1 vague about it, as to when it was, how often it was.
2 And maybe, you know, give him the benefit of the
3 doubt. I don't know if he knew all that. But it was
4 very hard for us to pin down timing and things as far
5 as what that schedule looked like.

6 And -- and again, the whole idea was, Can
7 we get someone in here to help? And he kept saying
8 no.

9 Q Okay. So how many times were there
10 communications where he was vague in explaining his
11 chemotherapy?

12 A The whole time. I don't remember exactly
13 when, from when he was diagnosed and started doing
14 chemo to when he was let go, but he was pretty vague
15 the whole time, at least from my experience.

16 Q Do you know whether Mr. Donaldson informed
17 Trae-Fuels and EnviroTech that he would need chemo --
18 he would need Fridays off for chemotherapy?

19 A I don't remember when. No. That was one
20 of the things I had heard, that he had told me, but
21 it wasn't always the case.

22 Q Did Trae-Fuels or EnviroTech have

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1 attendance records for its employees?

2 A Sorry. Repeat that?

3 Q Did EnviroTech or Trae-Fuels have
4 attendance records that would reflect when
5 Mr. Donaldson was at work or not?

6 A Not for a salaried employee. It would for
7 hourlies, yes, because they clock in and clock out.
8 Salaried employees, I do not believe we had -- I'm
9 pretty sure we didn't have a clock in, clock out
10 system or anything like that.

11 Q For salaried employees such as
12 Mr. Donaldson, did you keep records of requested days
13 off?

14 A Yeah. There is a paid time off system
15 within the payroll system. And if the employee asks
16 for that day off, then it would be approved by their
17 supervisor. If they didn't show up, and didn't -- or
18 if they called in sick or something, just in general,
19 then that person -- then that person was supposed to
20 put that in the PTO system when they got back.

21 But they were always required to call in
22 and let their supervisor know they were sick or call

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1 or text or whatever that they were sick or -- or
2 weren't going to make it in, those kinds of things.

3 Q Okay. Did you review any records such as
4 that to determine when Mr. Donaldson would be -- when
5 he missed work?

6 A No.

7 Q Okay. So let's talk about Mr. Donaldson's
8 termination.

9 So what was the basis for Mr. Donaldson's
10 termination from Trae-Fuels?

11 A That he -- he just didn't -- he wasn't
12 understanding the job. He didn't have the ability to
13 do the things that we needed him to do. Based on all
14 the mistakes and errors and inaccuracies.

15 The biggest -- one of the main reasons we
16 weren't happy was that he had -- he had allowed the
17 credit line, the line of credit, to overdraw. So we
18 had a certain amount of money for a line of credit.
19 And he was in charge of letting us know cash flow and
20 cash flow needs and all that as I mentioned earlier.

21 Well, the line of credit overdrew, meaning
22 it went past its limit, and it was a pretty large

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1 number. And the bank called us and said, Hey,
2 what -- what's going on here. You're -- you're --
3 you know, you're overdrawn with your line of credit.
4 What's going on.

5 And we had to scramble as a group to -- to
6 get cash -- I think EnviroTech ended up having to
7 loan money or something in a short-term basis for us
8 to get enough money in -- in the account to bring it
9 back within line of its -- of its limit.

10 And when we had talked to Michael about
11 this, one, he had -- he had blamed everyone else but
12 himself. But two, he -- he tried not to take, you
13 know, the blame or the accountability for allowing
14 this to happen. And we -- we talked to him about,
15 Hey -- and I think in the counseling form, they
16 talked to him as well, Hey, this is your job.

17 You need to let us know when -- how much
18 cash we need and those things. And that's a key job
19 as a -- as a controller. We need to understand this.
20 And it's a huge no-no with the bank to allow a line
21 of credit to overdraw.

22 So that was a big part of our reasoning as

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1 to why we let him go.

2 Q Okay. So not understanding the job, errors
3 and inaccuracies, and then there was a line of credit
4 overdrawn. Is there anything else?

5 A Yeah, just in general, as I mentioned, with
6 all the trainings, and you've seen all the -- my
7 observations. He just was not getting it. He wasn't
8 understanding. He had maintained that he had certain
9 abilities and skill sets to be that controller when
10 we hired him.

11 And we weren't seeing those in him. He
12 just didn't -- he didn't understand and didn't have
13 that strategic knowledge and ability to perform those
14 things.

15 Q When did Trae-Fuels or EnviroTech first
16 inform Mr. Donaldson that he was not performing his
17 job duties adequately?

18 A I don't know. I'm not sure if there
19 were -- there were several discussions about that. I
20 just don't know the timing or who did them.

21 Q Okay. As far as, like, errors and
22 inaccuracies, and that is talking about errors and

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1 inaccuracies in financial reports?

2 A Financial reports. Cash flow reports.
3 Inventory logs. All those things. Even -- even some
4 payroll information was inaccurate or not timely.

5 Q What payroll information was inaccurate or
6 not timely?

7 A There was -- one of his jobs was to make
8 sure that managers within Trae-Fuels were -- that
9 their people were clocking in and clocking out
10 correctly and if they were taking breaks and stuff.
11 And there were several occasions where there would be
12 a non-clock-out, and so then he couldn't run payroll.

13 And he didn't understand why, and we'd have
14 to counsel him on, Well, you need to go back in the
15 system. It tells you when there's not a -- when
16 someone hasn't clocked out or something like that or
17 they didn't clock in properly. He -- it was his job
18 to go to those managers.

19 And there were several occasions where he
20 would try to run payroll and he couldn't. And he
21 would call Michelle, and Michelle would walk him
22 through it again. On several occasions. She would

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1 called him on his personal cell phone?

2 A I don't remember having his personal cell
3 phone. Typically, the ways I contacted him was at --
4 either his work phone in the office or his work cell
5 phone or email. I don't remember ever having called
6 him on a personal phone.

7 Q Do you know whether anyone at EnviroTech or
8 Trae-Fuels had contacted Mr. Donaldson on his
9 personal cell phone?

10 A No, I don't remember one way or the other.

11 Q Okay. I guess, since you don't -- just
12 knowing what you know of sort of the cell phone
13 allegations with respect to Mr. Donaldson, are you
14 aware of any issue that EnviroTech and Trae-Fuels
15 had, you know, being unable to reach Mr. Donaldson
16 during that time period, with the cell phone being
17 left at work?

18 A Not specifically --

19 MR. LIEBELER: Objection. There's no --
20 objection. There's no foundation. He just testified
21 that he didn't know about it and he heard secondhand,
22 so if want to ask him a specific question, you can,

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1 but he's already exhausted his memory on that.

2 Q (By Mr. Jarrett) I just want to know if
3 you're aware of a problem reaching him because his
4 cell phone was left at work.

5 A No, not specifically because of that. I
6 don't remember anything around that.

7 Q Okay. So EnviroTech and Trae-Fuels met
8 with Mr. Donaldson on around June 4th, 2014, about
9 his performance, correct?

10 A Sorry. Repeat that first part again?

11 Q Yeah, actually, this might be a good time
12 for, like, a five-minute break. We're going to go
13 through a few documents, and then we should be done.

14 A Okay.

15 MR. JARRETT: So we can go off the record.

16 MR. LIEBELER: Okay.

17 MR. JARRETT: Five minutes?

18 MR. LIEBELER: Yes, why don't we go seven
19 minutes. I'm actually -- just a little bit more
20 time. So why don't we say seven minutes. I'll try
21 to keep on the line here. I'm on my cell phone.
22 I've got enough power here. Okay. Why don't we go

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1 about seven minutes, if that's all right?

2 (Recess from 11:41 a.m. to 11:49 a.m.)

3 MR. JARRETT: Okay. Let's go back on.

4 Q (By Mr. Jarrett) So we just took a quick
5 break. We're going to move on to some of these
6 exhibits.

7 So Mr. Whyrick, are you aware of whether
8 EnviroTech and Trae-Fuels met with Mr. Donaldson on
9 June 4th, 2014?

10 A Can you be more specific? I don't remember
11 the date. I know -- I know there was a group that
12 went out there and did that counseling form with him.

13 Q Okay. That's the meeting I'm talking
14 about.

15 A Okay.

16 Q What -- what led to that meeting occurring?

17 A Just that, you know, Michael was -- we had
18 gone through several -- you know, rounds of training
19 and we're still seeing issues. We weren't getting
20 the info we wanted as far as -- there was a score
21 card involved at some point that we were wanting him
22 to -- to produce for the company.

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1 Which included kind of -- kind of
2 consolidated some of the information we wanted, which
3 I think it included, like, cash flow and financial
4 information, maybe inventory and different things
5 like that. So we were trying to get him to do
6 something there, and he was struggling with that.

7 So they had a -- a sit-down with him to let
8 him know that, you know, he wasn't getting this stuff
9 done, that he wasn't -- you know, he needed to be
10 more involved in the strategy and getting us this
11 information that we need.

12 So I think Chris -- Chris LaRocco had given
13 him like, a template of the score card or something
14 during that meeting as well.

15 MR. JARRETT: Did we lose anybody? My
16 phone is making noise, I'm sorry.

17 MR. LIEBELER: That was me. Can I make --
18 one question before we continue. I just want to
19 make sure the record is clear, Jack. Is there
20 anybody in your conference room with you or are you
21 just by yourself?

22 MR. JARRETT: Yeah, I'm in my office, by

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1 myself.

2 MR. LIEBELER: Okay. I wanted to make sure
3 that the record is clear of everybody of who was on
4 the line and parties. Thank you.

5 MR. JARRETT: Yes, no problem.

6 Q (By Mr. Jarrett) Okay. So you mentioned
7 score cards. Had -- when was -- what score card are
8 you referencing with respect to this June meeting?

9 A Chris, I believe, if I remember right,
10 Chris had talked to Michael about things we wanted to
11 see as part of a score card financial, and
12 manufacturing score card that, as I mentioned,
13 consolidated a bunch of different things,
14 information-wise. So that that could be sent out on
15 a regular basis to the key managers so they could see
16 how things were performing.

17 And we had -- we had -- you know, prior to
18 this, going back, I don't know, several weeks, we had
19 tried to form this and get Michael to get us this
20 information, and he was struggling with that as well.
21 So I think Chris, during this meeting, had said he
22 was going to get him a template of the score card

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1 that he kind of helped develop. And for Michael to
2 use.

3 It was, like, a template for him to fill
4 in, because he was having a hard -- Michael wasn't
5 able to come up with this on his own.

6 Q Okay. So is it your understanding that in
7 that meeting, Mr. LaRocco provided Mr. Donaldson the
8 template or is that after?

9 A I'm guessing it was after. I'm not a
10 hundred percent sure on that.

11 Q Okay. And then is it your -- you're saying
12 that -- that Mr. LaRocco or others had asked
13 Mr. Donaldson to create this score card prior to the
14 meeting?

15 A Yeah. There were -- there were
16 conversations on what we wanted him to provide to
17 management leading well before then. And we were
18 wanting him to develop a system with -- with Trae
19 management that -- that basically got us this
20 information in a -- in a -- sort of a summary or
21 consolidated format. And he struggled with that. So
22 I think this -- at this meeting, part of that

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1 meeting, was Mr. Donaldson provided a list of items
2 on which he needed to improve his performance?

3 A I -- I don't remember a specific list. I
4 do remember the discussions afterwards relating to
5 score cards and, you know, some of the inaccuracies
6 in financials in cash flow statements and inventory
7 reports specifically. I don't -- I never did see a
8 list of items that I remember.

9 Q Okay. Do you know whether during his
10 employment, Mr. Donaldson was ever provided a list of
11 items on which he needed to improve?

12 A Yeah, there were times when -- when we
13 were -- throughout the process, especially early on,
14 where it was for training purposes, trying to come up
15 with lists with him as to say, Okay, here's what you
16 need to do. These are the items you need to make
17 sure happen on a regular basis, and those things.

18 It would have been as we were meeting
19 together over the phone or stuff like that. I -- I
20 don't recall who documented them or when or where,
21 whether they were sent emails or any of that stuff.

22 Q Do you know whether Mr. Donaldson -- is it

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1 your understanding that during the June 4th meeting,
2 Mr. Donaldson was informed that his overall
3 performance was not satisfactory?

4 A Repeat that again?

5 Q Sure. Was it your understanding that in
6 the June 4th meeting, Mr. Donaldson was informed that
7 his performance was not satisfactory?

8 A Yes. That's what -- that's what they went
9 there for, and I -- as far as what I read in that
10 other document, they had stated that.

11 Q Okay. Do you know whether there were any
12 meetings prior to June 4th in which Mr. Donaldson was
13 informed that his performance was not satisfactory?

14 A There were -- there were points in time
15 when John Frink had -- had mentioned to us that he
16 had talked to Michael on different occasions relating
17 to him not just throwing the financials on his desk
18 but them having meetings. And that he needed Michael
19 to be the person -- that he was supposed to be the
20 expert on those financials.

21 So he was supposed to come in and meet with
22 John regularly, at least monthly, on those, to show

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1 where we're at. Kind of, you know, those score cards
2 and different things. And Michael was not doing
3 that. So John Frink -- I wasn't involved in any of
4 those meetings, but I know John had told us that he
5 would get with Michael and say, Look, Michael, you've
6 got to do this. I don't want you to just throw these
7 on my desk.

8 So specifically, I remember that. There
9 were times when we had conversation with them saying,
10 Michael, you've got to do better than this. It would
11 have been part of our phone conversations. A lot of
12 times, it was, you know, You're not doing this right.
13 You need to do better. Is there anything you don't
14 understand as to why you can't do this accurately.

15 So there were several of those occasions as
16 well. As far as a written counseling situation like
17 they did in this, no, I don't think any of those were
18 sit-down, write down, put it on paper, saying, We had
19 this counseling session with Michael. It was more
20 during his work time saying, Look, we're seeing these
21 issues. You need to do this better. How can we
22 help? Is there training? Is there -- you know, what

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1 else? And those were regular. Those happened all
2 the time.

3 We typically, at EnviroTech, anyway, we
4 don't just write people up. We try to solve problems
5 with employees over time to help them understand
6 their deficiencies and work through them. Usually,
7 when we sit down and do a counseling form like this,
8 you're to the point that you're, like, this is -- You
9 aren't getting it. We've got to -- we've got to sit
10 you down and really bring this home by -- by having a
11 written form.

12 Q Okay. So you mentioned some conversations
13 about -- I think it's you or your team were involved
14 in as far as Mr. Donaldson performing better. Do you
15 recall saying that?

16 A Yeah. On multiple things.

17 Q Yeah, and since these were conversations
18 that occurred prior to this June 4th meeting, right?

19 A Yes.

20 Q Would there be any documents to reflect
21 that those conversations occurred?

22 A No, like I said earlier, we -- it wasn't

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1 like we sat down and wrote this out into a form
2 saying, We had this counseling with you, Michael.
3 Typically, it was during our meeting -- our weekly or
4 monthly calls that we're seeing these issues. Now,
5 Michelle may have -- there may be some emails out
6 there, I don't remember, that have -- to that effect,
7 that show that we were talking about these things.

8 But it wasn't like we physically sat down
9 with him and wrote it out, because we were in
10 Colorado, and he was in Virginia. So most of the
11 time, it was on the phone.

12 Q Okay. And you said Mr. Frink had some, I
13 believe, meetings in which he talked about
14 Mr. Donaldson needing, I believe, giving him more
15 information about financials? Is that right?

16 A Yes.

17 Q How did you learn that Mr. Frink thought
18 that Mr. Donaldson needed to get him more
19 information?

20 A He told our group. We had weekly meetings
21 with Mr. Frink, and later, we started bringing
22 Michael into these meetings. Those meetings were

1 UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF VIRGINIA
3 CHARLOTTESVILLE DIVISION
4 -----

5 MICHAEL DONALDSON, :
6 Plaintiff, :
7 v. : Case No.:
8 TRAE-FUELS, LLC, et al., : 3-18-CV-00097
9 -----

10 CONTINUED TELECONFERENCE 30 (b) (6) DEPOSITION OF
11 KEVIN WHYRICK
12 -----

13 Pursuant to Notice and the Federal Rules of
14 Civil Procedure, the teleconference deposition of
15 KEVIN WHYRICK, taken by Plaintiff, was held at
16 910 54th Avenue #230, Greeley, CO 80634 on
17 TUESDAY, NOVEMBER 5, 2019
18 AT 3:02 P.M. EST/1:02 P.M. MT
19

20 Job No.: 271490

21 Pages 210 - 262 Volume II

22 Reported by: Caryn S. Keilman, RPR

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1 know approvals, and so on expense related items, a
2 requisition has to be created first, then it needs
3 to be approved in the system in order to have a PO
4 made.

5 So, it wouldn't allow that, but if he
6 tried, which happened a couple of times to my
7 knowledge, he made a PO, a straight PO instead of
8 going through the requisition process, and those
9 were probably the corrections.

10 Like, I know Gohar had been working
11 with him on this and Michelle to say, look, you
12 can't do that, you have to go through the
13 requisition process.

14 Q If you look at the last sentence, it
15 says: When asked if that procedure of
16 implementation was executed, Mr. Donaldson stated
17 that he had not gotten around to it.

18 Can you explain what the procedure of
19 implementation means?

20 A It's in that same paragraph?

21 Q Yeah, the last sentence in that
22 paragraph that starts 6-18-14?

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1 A That's what I was talking about a
2 minute ago. You have to follow that procedure on
3 an expense payable. You have to create a purchase
4 requisition, that then has to be approved and then
5 it's turned into a PO. So, that's what that
6 procedure of implementation would have been.

7 Q You are saying he would have
8 intermittently do that but not every single time?

9 A At times, sorry.

10 Q You can go ahead.

11 A There were times where he would instead
12 of going through the requisition process, he was
13 making a straight PO or he was slow to get it in.
14 You have to go through this, in order for it to
15 post in IFS, for financials to be accurate that
16 process has to be followed timely. So that would
17 have needed to be done on a regular basis for
18 those various expense payables that were coming
19 in.

20 Q Okay, and I believe your testimony was
21 that he had previously been directed to follow
22 this process, correct?

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1 A That would have been part of his
2 training, correct.

3 Q Are you aware of any documents
4 criticizing him for not following the process
5 prior to June of 2014?

6 A Not offhand, no.

7 Q So, I believe one of the criticisms
8 that you guys had regarding Mr. Donaldson was that
9 his alleged or excuse me, his mismanagement of IFS
10 caused Trae-Fuels to draw on Trae-Fuels' line of
11 credit to pay for the company's general operating
12 costs. Are you aware of that incident?

13 A As I mentioned last time, it was an
14 overdraft on the line of credit. The drawing on
15 the line of credit is why it's there. You know,
16 you have a line of credit so you can draw on it
17 for needs and, as I mentioned last time, it's a
18 zero balance account.

19 What the criticism was, was the
20 overdraft of that line of credit. It was drawn on
21 in excess of what was allowed at the bank.

22 Q Can you just describe what caused that

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1 overdraft?

2 A The cash flow statements that we talked
3 about last time were not accurate, and so we
4 didn't know about this cash demand. The idea of
5 cash flow statements were so that we knew what the
6 cash demand would be for the company and whether
7 or not we needed to fund in addition to what the
8 line of credit would allow for.

9 It caught us all by surprise when we
10 got a call from the bank that it had been
11 overdrafted. As I mentioned last time, that's a
12 big no-no, according, you know, when it comes to
13 the bank.

14 So, his, Michael's problems with
15 understanding the cash flow statement and
16 accurately and timely bringing that cash flow
17 statement to us allowed that to happen. We were
18 dependent on the Controller of the company to
19 provide that information on a regular basis.

20 Q When did you receive the call from the
21 bank that the line of credit had been overdrafted?

22 A I don't remember the date, it's too

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1 long ago to remember that.

2 Q Did you receive any documents from the
3 bank regarding the overdraft?

4 A I don't remember.

5 Q In your experience as an accountant, if
6 you over draft a line of credit, is it normal to
7 receive a document from the bank?

8 A Typically the bank will call because we
9 have good standing relations with the bank. So,
10 typically our loan officer would call and say,
11 hey, what's going on here? It overdrafted your
12 line of credit, what do you want to do?

13 We had to scramble the funds up.
14 EnviroTech having to transfer money to the bank so
15 that we were back within line of that line credit.
16 So, typically, no, we wouldn't get an email or a
17 document, it would be a call.

18 Q Do you know, I am trying to place this
19 on the calendar sort of, do you know how, I
20 believe that the overdraft must have occurred
21 before the June 4th counseling, right?

22 A I don't remember. I can't definitively

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1 say.

2 Q You say the cash flow statements were
3 inaccurate and that's what lead to the overdraft,
4 is that correct?

5 A Yeah, they were inaccurate quite a few
6 times and in this case, they were inaccurate as
7 well.

8 So, we didn't know what was coming, and
9 if I remember correctly, we got those on like a
10 weekly and sometimes a daily basis depending on
11 cash need, inventory, inventory demand, those
12 things. And so, if, you know, if we knew it was
13 getting tight, we would say hey, we want to look
14 at this daily so that we knew whether or not we
15 needed to fund or what we had at the line because
16 we did not want that to happen.

17 It caught us offguard because the cash
18 flow statements did not show that we would over
19 draft the line of credit, so, that means they were
20 inaccurate.

21 Q What was inaccurate about the cash flow
22 statement that caused the overdraft?

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1 A From my memory, there were a couple of
2 things we were having issues with. One was
3 correct the incoming cash, which I mentioned last
4 time from receivables and as you collect on those
5 receivables, that was inaccurate and the cash
6 outlays were not timely, so that would be any cash
7 outlay, whether it's for inventory, expenses,
8 labor, those kinds of things, it wasn't accurate
9 either. So, that created, you know, more than one
10 reason for it to be out of whack, it wasn't
11 accurate.

12 Q Specifically with the cash flow reports
13 that were inaccurate before that lead to the
14 overdraft, do you know what specifically was
15 inaccurate about those cash flow statements?

16 A I don't remember exactly, but it would
17 have been one of those two things or both.

18 Q How much was the overdraft?

19 A I don't remember. Just off the top of
20 my head, I think it was a million or more, but I
21 don't have that in front of me and I don't recall.

22 Q Was there a particular payment that

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1 caused the overdraft? Were you paying for
2 inventory, were you paying for electricity? Do
3 you know what the payment was that, what the
4 actual payment was that caused the overdraft?

5 A I don't remember, that was too long
6 ago, I would have to go back to my records.

7 Q What records would show what the
8 payment was?

9 A We would have to dig back into old
10 information to see if it was there, what was
11 available, emails, spreadsheets, those kind of
12 things.

13 Q Do you know whether the overdraft
14 occurred while Mr. Donaldson was out on leave?

15 A No, I don't think it was, I think it
16 was before that.

17 Q So, I will represent to you that
18 Mr. Donaldson took leave between about May 15th,
19 when he learned of his pancreatitis and pancreatic
20 cancer and May 27th after he went to Utah and
21 adopted a baby. You don't know whether, you tell
22 me, do you know whether the overdraft occurred

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1 during that time period?

2 A Again, I can't remember the exact date,
3 so, I would have to go back and look and see when
4 that occurred.

5 Q What would you look at, you said
6 emails, what else would you look at besides emails
7 to figure out when the overdraft occurred?

8 A Well, we would have to go back and look
9 at the bank records of emails and what not.

10 Q Just some clarifying questions,
11 Mr. Donaldson did not have responsibilities for
12 generating sales at Trae-Fuels, did he?

13 A No, he did not.

14 Q Mr. Donaldson was not responsible for
15 ensuring the plant didn't have mechanical problems
16 with its equipment, right?

17 A Correct.

18 Q There was an issue, do you recall an
19 issue with Trae-Fuels having a mechanical problem,
20 which turned out to be a crimped wire?

21 A No, not specifically.

22 Q Do you recall Trae-Fuels having issues

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1 with the plant mechanical operation or its
2 equipment working properly?

3 A Yeah, with a plant like that, you have
4 to schedule for downtime and so, you know, you are
5 going to have downtime in that process.

6 Whether it's scheduled or not
7 scheduled, if there was a problem, there could be
8 many a reason why the plant could go down at any
9 given time, it could be clogged mills, it could be
10 you know you got to clean out stuff, and the
11 further we got in, the more we tried to make that
12 preventative so we didn't have that downtime, but
13 you are always going to have that in a plant.

14 Q Was there a time that Trae-Fuels had to
15 make a capitol call to its investors to get
16 additional capitol?

17 A Yes.

18 Q How many times has that occurred?

19 A I don't remember exactly. It was more
20 than two, probably two to four. EnviroTech ended
21 up doing more than that, but all investors, I
22 think it was in that two to four range.

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1 Q Were the capitol calls before
2 Trae-Fuels had overdrafted its line of credit or
3 after?

4 A I don't remember. I know the one, we
5 had to scramble to do the one after it had
6 happened, so EnviroTech ended up loaning the money
7 to Trae because we had to transfer it across, so
8 we had to account for that.

9 I believe we had started a loan with
10 them, EnviroTech was loaning Trae money. So
11 that's when we started doing that because we had
12 scrambled for that purpose.

13 Q For that purpose, you are saying
14 because of the overdraft on the line of credit?

15 A Correct.

16 Q Do you remember whether EnviroTech had
17 made loans to Trae-Fuels prior to the overdraft?

18 A Like I said, I don't remember the date
19 of that overdraft, so I can't pin it on when those
20 were loans were made or not, all I remember is the
21 one that happened right after the overdraft.

22 Q Was this the only time that EnviroTech

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1 or excuse me, was this the only time that
2 Trae-Fuels overdrafted its line of credit?

3 A Yes, from my memory, yes.

4 Q Can we go to Pages 43 and 44 of Exhibit
5 1, email from Mr. Donaldson to Michelle Mills
6 copying you, dated July 21st, 2014. Do you see
7 that?

8 A Yes.

9 Q Please take a second to review this
10 email chain, it goes on to Page 44 as well.

11 A I just read the first email from
12 Michael.

13 Q Do you want to look at the next one,
14 the one from Michelle, it's about three lines.

15 A Okay, I am good.

16 Q I am trying to figure out, do you
17 think, is this email evidence of poor performance
18 by Mr. Donaldson or is this just day-to-day
19 communication?

20 A It looks like day-to-day communication.

21 Q Can we go to Page 58, it's the last
22 page, I think?

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1 A Okay.

2 Q This appears to be Mr. Donaldson's
3 termination letter, is that correct?

4 A I don't know, I have not looked at it.

5 Q If you look at the last paragraph, it
6 says Michael had been warned with a written
7 warning about four weeks earlier and then signed
8 by the name Mr. John Frink?

9 A Okay.

10 Q What is the written warning this is
11 referring to?

12 A I have no idea. I didn't write the
13 email, so I don't know what John was writing
14 there.

15 Q Can we go to Exhibit 3, which has been
16 previously marked as Plaintiff's Exhibit 3. It
17 was not incorporated in the prior day's
18 deposition, but it should be incorporated in this.
19 Let me know when you get there.

20 A I am there.

21 Q All right. Have you seen this document
22 before?

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1 A I don't recall, I haven't looked
2 through it. I don't know if I have seen it or
3 not.

4 Q Take your time and look through it and
5 particularly on Page 10, if that signature is
6 yours?

7 A Yes, that's my signature.

8 Q Do you recall reviewing this document?

9 A Yes, I do.

10 Q Can you go to Pages 4 and 5, starting
11 on 4 and going onto 5?

12 A Okay.

13 Q Looking at Question Number 5 and in the
14 response on Page 4, the second sentence of the
15 response starts, in May, 2014, more than six
16 months after he was hired and initially trained,
17 Mr. Donaldson was still unable to understand and
18 correctly use the company's IFS/accounting
19 software applications, which are crucial to the
20 company's operational success and a core function
21 of his position as Controller.

22 What specifically was Mr. Donaldson

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1 unable to understand and use with the IFS system?

2 A We went over this in the last
3 deposition, there were a number of things. The
4 IFS is an ERP system so it fully implements
5 everything from shop orders for inventory mixing,
6 to the purchase requisitions, purchase orders,
7 invoicing. It's got a lot of functions.

8 As I mentioned last time, he had
9 struggled with the shop order functionality, the
10 inventory management functionality. He had, as we
11 had mentioned in the prior emails, he had some
12 issues with the timeliness and accuracy but also I
13 think from an understanding standpoint of the
14 purchase requisition and purchase order system.

15 There were a lot of things that he was
16 struggling with and some of them, the financial
17 reporting side of it, he had some hard times with
18 because he would send us inaccurate financials.

19 We would come back and say, hey, these
20 aren't accurate, and most of the time it stemmed
21 from the inventory management, expense management
22 posting correctly to the correct accounts, just

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1 of Mr. Donaldson's employment, he would have been
2 directed to create cash flow analysis?

3 A Yes, it would have been easier in the
4 early stages because we were just ramping up so it
5 would mostly have been cash out. Once we started
6 producing pellets, that's when it required more
7 information, cash in, cash out and all of those
8 things.

9 Q How often did Mr. Donaldson -- I am
10 sorry, let me rephrase. How often was Mr.
11 Donaldson required to create cash analysis? How
12 frequently is my question?

13 A It varied. We always had to have it
14 monthly, but when we were really watching cash
15 closely it would have been weekly or even daily
16 depending on the time of year and what we were
17 doing during that timeframe. For sure, weekly.

18 I remember looking at them on a weekly
19 basis. The monthly would have been more for the
20 financial reporting, the weekly would have been so
21 that we knew what was going on with cash during
22 that timeframe.

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1 Q Let's go to Plaintiff's Exhibit 2.

2 A Okay.

3 Q Do you know what this document is?

4 A I have never seen it before, but I can
5 read, it says Termination Notice For Employee
6 Benefits.

7 Q So, I will just ask you -- you have not
8 seen this document?

9 A Not that I remember.

10 Q Apart from this deposition, correct?

11 A Not that I remember.

12 Q Did Trae-Fuels provide its employees
13 health insurance?

14 A They did.

15 Q Did Trae-Fuels, did providing that
16 health insurance cost Trae-Fuels money?

17 A Yes.

18 Q Did the employee also have to pay a
19 portion of their health insurance?

20 A Yes, I believe so.

21 Q Do you know who provided the insurance
22 for Trae-Fuels' employees, what company?

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1 A Factoring in this timeframe, I don't
2 remember a hundred percent.

3 Q Do you know how the total cost paid by
4 Trae-Fuels was determined?

5 ATTORNEY LIEBELER: Objection to form,
6 do you mean for health care costs?

7 ATTORNEY JARRETT: Yes, I will
8 rephrase.

9 BY ATTORNEY JARRETT:

10 Q Do you know how the cost Trae-Fuels
11 paid for the health insurance was determined?

12 A Yes, every year we would go to renewal,
13 the company on here, Shirazi Benefits, is our
14 broker and they would go out and get quotes on
15 health insurance. Trae-Fuels' policy was a
16 sub-policy under EnviroTech because EnviroTech
17 owned the majority of Trae-Fuels, it was a
18 sub-policy.

19 So, they would go out and get quotes,
20 they would come back, we would take several
21 factors into account, is it the existing health
22 care provider? Do they do a good job? How much

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1 is their increase, those things, and we would look
2 at that and say, all right next year, it's going
3 to be "X" per employee, you had four categories of
4 employees: Employee, employee/spouse, employee/
5 children, and family. Typical categories for
6 health insurance, and we would look at those every
7 year and say, okay, is health insurance going up
8 and if so, you know we would typically pass some
9 of that along to the employee and the company
10 would cover some of it, it varied by years.

11 It seems like health insurance always
12 goes up every year, but it would vary by year and
13 as to how much that would go up. So, we would
14 divvy that up based on employee, those four
15 categories I mentioned, and what Market would
16 cover. Market covered most of it, especially with
17 employee only. Market and Trae, they would cover
18 a majority of the health insurance so employee
19 only would have a smaller amount come out of their
20 check on a monthly basis than say employee/family
21 because the costs are just different and higher.

22 Q You said that contract -- excuse me.

Transcript of Kevin Whyrick, Volume 2

Conducted on November 5, 2019

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1 So, I think that you used Trae-Fuels and
2 EnviroTech would get a new contract for health
3 insurance annually, is that correct?

4 A It would be a new quote annually, yes
5 we would go through it. I don't know that there
6 was a specific contract or something like that,
7 but we would choose who we were going with and we
8 would do that on an annual basis.

9 Q Do you know what part of the year that
10 would occur in, the quote process?

11 A We switched it at one point, but right
12 now it's a calendar year end, we start that
13 process, like right now we are going through it,
14 it's called open enrollment. We would start that
15 process probably in September-ish and then we
16 would have everybody enrolled by the end of
17 November, then the new health insurance would kick
18 in as of January 1.

19 Q Let's go to Plaintiff's Exhibit 6.

20 A Okay.

21 Q Are you a looking at an email from
22 Chris LaRocco from you and Beth Aleman on, it

Transcript of Kevin Whyrick, Volume 2

Conducted on November 5, 2019

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1 looks like June 21st, 2014, is that the document
2 that you are looking at?

3 A Yes, from me to Chris?

4 Q I think it's from Chris to you and
5 Beth, it should be on the bottom right corner,
6 TRAE-PROD0008816?

7 A Oh, you are right, it's to Kevin from
8 Chris, okay.

9 Q So, in this email from Chris LaRocco,
10 it says Michael that had voiced a concern quote,
11 that he had never been informed of any performance
12 issues by John, and is therefore upset about the
13 manner in which the recent review and probation
14 periods were handed down, end quote.

15 Do you know whether Mr. Donaldson had
16 been informed of any issue by John Frink prior to
17 this email?

18 A I only know what I was told by
19 Mr. Frink in discussions he said he had with
20 Michael.

21 Q But Mr. Frink said he had discussed, I
22 guess, Mr. Donaldson's poor performance with him?

Transcript of Kevin Whyrick, Volume 2

Conducted on November 5, 2019

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1 A Correct.

2 Q Do you know whether anyone had any
3 communications with Mr. Donaldson saying you're
4 wrong, Mr. Frink did warn you?

5 A No, I don't recall whether that
6 happened or not.

7 Q Can you go to Plaintiff's Exhibit 8.
8 It's a document that should be in the bottom
9 right-hand corner, TRAE-PROD 0003612, it's a
10 two-page document? Do you see that?

11 A I do.

12 Q So, this is, there is not signature
13 here, it looks like it's an email from Beth Aleman
14 to Michael and you as well, discussing some
15 processes as far as a new employee starting. Do
16 you see that?

17 A Yes.

18 Q Do you know whether Mr. Frink directed
19 employees to start working for Trae-Fuels before
20 they had all of their insurance documents
21 submitted?

22 A No, I don't recall, I don't recall any

EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION**

MICHAEL DONALDSON,

Plaintiff,

v.

TRAE FUELS, LLC., et al.

Defendants.

Case No.: 3:18CV00097

**PLAINTIFF'S SUPPLEMENTAL OBJECTIONS AND RESPONSES TO
DEFENDANTS' INTERROGATORIES AND DOCUMENTS REQUESTS TO
PLAINTIFF**

Plaintiff Michael Donaldson, by and through undersigned counsel, hereby provides his objections and responses to Defendants' Interrogatories and Document Requests as follows:

INTERROGATORIES

1. Describe in detail the time and manner in which you informed your employer that you had been diagnosed with cancer. Your answer should include, but not be limited to, a description of all verbal communications with any other person in your workplace regarding your diagnosis.

OBJECTION: Plaintiff objects to the request as vague in that "all verbal communications with any other person in your workplace," could mean conversations Plaintiff had or conversations any employees had. Plaintiff further objects to the request to the extent it is unduly burdensome in that the benefit of describing all conversations regarding Plaintiff's diagnosis does not justify the burden of describing each such conversation with individuals who had no supervisory

May 15, 2014 to August 20, 2014.

RESPONSE: Mr. Donaldson's physicians did not impose any physical restrictions on him other than to instruct him to undergo chemotherapy which was first scheduled on July 3, 2014. Mr. Donaldson took chemotherapy on three Fridays a month and took time off of work to attend those appointments. Mr. Donaldson was able to make up the time off during the prior four days in his workweeks.

3. Identify and describe in detail all negative symptoms or conditions experienced by you as a result of your cancer and subsequent treatment. Your answer should include, but not be limited to, a specific description of how any such symptoms or conditions affected your ability to perform your work for the Company.

RESPONSE: Mr. Donaldson suffered from abnormal cell growth in his pancreas. To treat this, Mr. Donaldson underwent chemotherapy and was thus forced to work a modified schedule. Mr. Donaldson responded well to the chemotherapy which he took on Fridays and the primary symptom he felt after chemotherapy was a lethargic feeling on Saturdays or on Sundays.

Mr. Donaldson also suffered from blood loss because the tumor on his pancreas blocked the splenic artery which caused blood to flow around the tumor to portal veins that ruptured. Mr. Donaldson had to get blood transfusions to treat this blood loss. The first blood transfusion Mr. Donaldson received was on March 25. A week later, Mr. Donaldson had another transfusion. The next transfusion was in July during the period Mr. Donaldson was undergoing chemotherapy. From July through November 2014, Mr. Donaldson continued to receive blood transfusions, originally once a month and then once every two weeks through October to

Donaldson's monthly financial statements had to be approved by Mr. Whyrick and/or Michelle Mills, his subordinate. Mr. Whyrick approved Mr. Donaldson's work and rarely had many additions.

Mr. Frink periodically praised Mr. Donaldson's performance with comments like "good job."

5. Describe in detail all verbal and written communications you exchanged with the temporary accountant referred to in ¶ 44 of your Complaint.

OBJECTION: Mr. Donaldson objects to the request for communications between him and the temporary as irrelevant and disproportionate to the needs of the case given the lack of importance of resolving the issues in this case. Subject to and without waiving the foregoing objections, Mr. Donaldson recalls that when he got out of the hospital following his pancreatic cancer and pancreatitis diagnosis, Kevin Whyrick informed him that they hired the temporary accountant and that Mr. Donaldson was supposed to train her. Mr. Donaldson then returned from the trip to adopt his child and met the temporary accountant.

Mr. Donaldson does not recall the specifics of any written or verbal communication with the temporary accountant. On Monday, May 27, 2014, Mr. Donaldson began training the temporary accountant. Mr. Donaldson is not positive what aspects he started training her on first but believes he showed her the general ledger and chart of accounts, and also how payroll and accounts payable worked. Over the next several days, Mr. Donaldson showed her how to do the tasks he knew how to do as he performed them, and he also watched her perform some of the tasks. Mr. Donaldson also showed her the ERP system and how to make entries. Mr. Donaldson also believes that he provided her some EnviroTech materials regarding work procedures. Mr.

long-term but Mr. Frink relayed the final decision to release her to her. Mr. Donaldson was not aware of the date of the temporary accountant's last day and thus did not provide this information to her.

7. Describe in detail all difficulties you had in operating and understanding the Company's IFS system. Your answer should include, but not be limited to, a detailed description of each instance in which you requested assistance and/or clarification from another employee or supervisor related to IFS and / or those instances in which you requested or were required by the Company to engage in further training on the IFS system.

OBJECTION: Plaintiff objects to the request in that the phrase "difficulties in operating and understanding the Company's IFS system," is undefined and, for instance, could encompass irrelevant technical difficulties unrelated to Plaintiff's performance. Subject to and without waiving the foregoing objection, Plaintiff states that he did not have any difficulties operating and understanding the IFS system after he was trained on it and only had day-to-day discussions with colleagues about general questions or confirmation that he was performing tasks correctly. Plaintiff went to EnviroTech's Colorado office to engage in IFS training in November 2013 to learn the structure and functionality of the system, which was similar to other enterprise resource planning ("ERP") systems Mr. Donaldson worked with in prior jobs. ERP systems allow companies to track various information, including accounting and inventory information. In this training, an IFS consultant showed Mr. Donaldson the various functions and modules of the IFS system and how to operate each. Mr. Donaldson believes that this training was done using hypothetical information and was not specific to Trae Fuels which was not operational enough to provide information to use to train on IFS.

8. Identify each and every occasion in which you took leave from the Company and did not inform your supervisors and / or co-workers regarding the duration of your leave.

OBJECTION: Plaintiff objects to this request as irrelevant. Subject to and without waiving the foregoing objection, Plaintiff states that on March 25, 2014, Mr. Donaldson lost half his blood supply and took leave and was hospitalized in the intensive care unit. The next morning, Mr. Donaldson called Mr. Frink from the ICU, while his wife held the phone, and took leave and told Mr. Frink what had happened and that he had been hospitalized. Mr. Donaldson did not tell the company the duration of his leave because he did not know how long he would be hospitalized. Mr. Frink and Clayton Walker visited Mr. Donaldson in the hospital on March 26.

When Mr. Donaldson was hospitalized on May 19, 2014 with the incorrect pancreatitis diagnosis, he again was unable to tell Mr. Frink how long he would need leave.

Mr. Donaldson did not otherwise request leave without informing his supervisors how long he would be out of the office.

9. Describe in detail all “high-level tasks” which you were asked to perform and the related “greater role” you were asked to take on as described in ¶ 74 of your Complaint.

RESPONSE: Plaintiff states that Mr. LaRocco and Ms. Aleman directed him to take charge of reducing Trae Fuels’s spending and essentially force Mr. Frink not to spend money he had been spending to fix problems in the plant and keep it operating. Mr. LaRocco and Ms. Aleman also directed Mr. Donaldson to do more to explain the financial reports to Mr. Frink, although Mr. Donaldson had already been explaining the company’s financial position to Mr. Frink and did not have the authority to direct Mr. Frink’s spending.

immediately hired a temporary accountant upon Mr. Donaldson's hospitalization on May 19, 2014.

When Mr. Donaldson returned to work, on Tuesday, May 27, 2014, Ms. Aleman unfairly criticized him for leaving his work cell phone in the office while he traveled to Utah to adopt his child. This criticism was unjustified because Mr. Donaldson had left his phone to be fixed because it was malfunctioning and his supervisors knew he was available on his personal cell phone, which they had used to communicate with him prior to this time.

Mr. Donaldson's supervisors asked him questions about his pancreatic cancer and about its potential effect on the company. Mr. LaRocco asked Mr. Donaldson if he planned to work part-time and stated "your wife must have good insurance." Mr. Whyrick asked Mr. Donaldson if his cancer was slow or aggressive. Mr. LaRocco mentioned that his aunt or great aunt had died from pancreatic cancer.

When the company terminated Mr. Donaldson, it did so without having provided him written or verbal discipline or providing him an opportunity to improve his supposedly deficient performance. The company provided other employees such warning or opportunities to improve. During Mr. Donaldson's termination meeting, Mr. Frink claimed that Mr. Donaldson did not fit the company culture even though he had never raised that issue prior to the meeting.

12. Describe in detail each and every fact in support of your contention in ¶ 104 that the Company "refused to engage in an interactive process to identify reasonable accommodations."

OBJECTION: Plaintiff objects to this request as unduly burdensome and disproportionate to the needs of the case in that both parties have access to the same facts from which to draw the legal

- c. Plaintiff is entitled to damages for lost insurance benefits in the amount of \$16,000.20

When Defendants terminated Plaintiff, he lost his insurance and had to purchase replacement insurance through his wife's employer. In 2014, this caused Plaintiff to have to pay an additional \$6,000 deductible (he had already paid his deductible on his EnviroTech and Trae Fuels insurance). Additionally, Plaintiff has had to pay an additional \$166.67 per month from January 1, 2015 to present for insurance coverage through his wife. Over sixty months through December 31, 2019, this totals \$10,000.20.

- d. Plaintiff is entitled to emotional distress damages in the amount of \$300,000.

Plaintiff experienced significant emotional distress as a result of his unlawful termination that Plaintiff calculates to exceed the caps on damages available under the Americans with Disabilities Act. Plaintiff thus calculates his damages at the maximum available pursuant to those caps.

- e. Plaintiff's damages include pre- and post-judgment interest and attorney's fees, and may include expert witness fees, costs, and expenses.

Should Plaintiff prevail, the Court will award pre and post-judgment interest on the award. The Court may also award attorney's fees. Those fees are not relevant until Plaintiff prevails, however, at which point the parties will have the opportunity to contest Plaintiff's fee petition.

14. Identify each person who contributed the facts set forth in your answers to these Interrogatories, identify which Interrogatory he/she contributed the facts for, and

EnviroTech Logistics Analyst.

Plaintiff believes Ms. Vannest has first-hand knowledge of the relationship between EnviroTech and Trae Fuels and general knowledge of Plaintiff's employment, performance, and termination.

- g. Michelle Mills
EnviroTech Corporate Controller

Plaintiff believes Ms. Mills has first-hand knowledge of the relationship between EnviroTech and Trae Fuels and general knowledge of Plaintiff's employment, performance, and termination.

- h. Gohar Wise
EnviroTech Assistant Controller

Plaintiff believes Ms. Wise has first-hand knowledge of the relationship between EnviroTech and Trae Fuels and general knowledge of Plaintiff's employment, performance, and termination.

- i. John Frink
Trae Fuels General Manager

Plaintiff believes that Mr. Frink has first-hand knowledge of Plaintiff's employment and performance, the relationship between EnviroTech and Trae Fuels, and the reasons for Plaintiff's termination.

- j. Fran Holliday
Trae Fuels Office Manager

Plaintiff believes Ms. Holliday has general knowledge of the relationship between EnviroTech and Trae Fuels, Plaintiff's employment, performance, and termination.

- k. Clayton Walker
Trae Fuels Plant Manager

Plaintiff believes Mr. Walker has general knowledge of the relationship between EnviroTech and Trae Fuels, Plaintiff's employment, performance, and termination.

- l. Chris Bach
Trae Fuels Sales Manager

EnviroTech and Trae Fuels have not claimed that Plaintiff was unable to perform the essential functions of his position.

17. Describe in detail the June 4, 2014 meeting between you and Trae Fuels / EnviroTech employees.

RESPONSE: Plaintiff met with Mr. Frink, Mr. LaRocco, and Ms. Aleman. Mr. LaRocco and Ms. Aleman did not criticize Plaintiff's performance in the meeting, instead, the meeting was about Trae-Fuels's profitability and what Mr. Frink needed to do to ensure Trae-Fuels was viable. Ms. Aleman led the meeting and said that Trae-Fuels was running out of cash. Ms. Aleman stated that they had to go back to Trae-Fuels's owners and obtain additional capital due to lack of probability. Ms. Aleman instructed Mr. Donaldson to perform cash flow projections for Mr. Frink and to do more to ensure Mr. Frink made better financial decisions. Mr. Donaldson replied that he did push back on Mr. Frink but that Mr. Frink was the General Manager and that he did not have signing authority to authorize cash expenditures or draw down on the company line of credit. Those spending decisions had to be authorized by Mr. Frink, Mr. Whyrick, or Roger Knoff of EnviroTech. Mr. LaRocco and Ms. Aleman asked that Plaintiff perform more high-level tasks and that he take on a greater role in instructing Mr. Frink on financial matters. Plaintiff does not recall any complaints about him other than the trivial telephone issue Ms. Aleman raised.

18. Describe in detail all efforts you have made to obtain employment since the termination of your employment at Trae Fuels.

SUPPLEMENTAL RESPONSE: Following Mr. Donaldson's termination within a week or so, Mr. Donaldson contacted Solomon Edwards, an accounting contracting company he had

Fredericksburg, Virginia area to include temporary contractor positions that were scheduled to last at least six months. Mr. Donaldson believes he has applied to a handful of these positions, but he has not found many. Mr. Donaldson did not receive any job offers for these positions.

On July 10, 2017, Mr. Donaldson had another telephone interview for a controller position with IDX. Mr. Donaldson interviewed for the same position on June 27, 2018. Mr. Donaldson did not receive a job offer following either interview.

Mr. Donaldson had a telephonic interview for a Senior Controller position with Qiagen, a company in Germantown, Maryland, on September 26, 2018 but did not receive an offer. Mr. Donaldson also interviewed for a CFO consulting position on January 8, 2019 with B2B, but again did not receive an offer.

Mr. Donaldson also periodically spoke with recruiters from staffing companies who looked for positions for him.

For records of his job search, Mr. Donaldson refers Defendants to his document production in this case.

19. Describe in detail each occasion upon which you participated in counseling, reprimanding, or terminating a Trae Fuels employee. Your answer should include, but not be limited to, the name of the employee, a description of any job performance issues related to the employee, and the result of the process (i.e., reprimand, probation, termination, etc.).

OBJECTION: Mr. Donaldson objects to the request as unduly burdensome and irrelevant in seeking detailed descriptions of irrelevant discipline against other employees. Subject to and without waiving the foregoing objection, Mr. Donaldson states that he believes he sat in on five to ten meetings in which Trae Fuels plant employees were counseled, reprimanded, or fired. In these

attorney-client privilege or work product doctrine. Subject to and without waiving the foregoing objection, Plaintiff will produce responsive documents.

4. Produce all documents related to your job performance.

OBJECTION: Plaintiff objects to the request to the extent it seeks information protected by the attorney-client privilege or work product doctrine. Plaintiff objects to the request as unduly burdensome in seeking all documents related to his job performance, which encompasses any number of documents without probative value in this case. Plaintiff will produce all documents he received from Trae Fuels or EnviroTech concerning his job performance.

5. Produce all documents you intend to offer as exhibits at trial.

OBJECTION: Plaintiff objects to the request to the extent it seeks to impose standards that are different than the Scheduling Order in this matter. Subject to and without waiving the foregoing objection, Plaintiff will produce responsive documents.

6. Produce the “waiver of liability form” referred to in ¶ 56 of your Complaint.

RESPONSE: Plaintiff does not have the form in his possession, custody, or control.

7. Produce the chemotherapy schedule referred to in ¶ 78 of your Complaint.

RESPONSE: Plaintiff does not have the form in his possession, custody, or control.

8. Produce all communications with persons outside the Company in which you describe limitations on your ability to perform your job responsibilities with Trae Fuels. Your response

CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2019, I served the foregoing document by First Class Mail and email, on:

Jackson S. Nichols, Esq.
Cohen Seglias Greenhall Pallas & Furman PC
1828 L. Street, N.W.
Suite 705
Washington, D.C. 20036
(202) 466-4110
JNichols@CohenSeglias.com

Lars H. Liebeler, Esq. (*admitted pro hac vice*)
Lars Liebeler PC
1828 L. Street, N.W.
Suite 705
Washington, D.C. 20036
(202) 587-4747
LLiebeler@LHL-LawFirm.com

Respectfully Submitted,

/s/Jack Jarrett

Jack Jarrett (VSB #86176)

EXHIBIT 4

To: Kevin Whyrick[kwhyrick@envirotechservices.com]
Cc: Michael Donaldson[mdonaldson@traefuels.com]
From: Michael Donaldson
Sent: 2013-12-26T11:46:16-05:00
Importance: Normal
Subject: Re: October 2013 - Journal Entries attached
Received: 2013-12-26T11:46:16-05:00
October 2013 - Journal Entries - Reclass.xlsx

Good Morning Kevin,
I hope that you had a great Christmas.

I'm back from North Carolina and in the office early this morning. I'm sure you're finding this a great time to catch up on things when the phones aren't ringing and others (both internal and external contacts) are out.

Please find attached the October 2013 Journal Entries that I'm going to make so far. I've highlighted in yellow some items that you might just want to take a good look at (either questions, proposed accounts or explanations).

When you have a moment early in the day today, could you please give me a call to discuss the following?

- 1) What I'd like to do is print out a complete detail general ledger (transactions for the month of October) to review, just to see if things look good. I find it a great tool to take a look at the monthly transactions by account to see that everything is posted to the correct account, missed any accruals, or reversals, etc. Want to make sure I have all the entries I need for October in. Not sure exactly how I run this report, but I've looked and have an educated guess.
- 2) Is there a inquiry that will give me the G/L balance per account only? I did look at the GL Balance analysis and it seems to give me by period the net debits/credits and net activity for the month, but not the ongoing balance. It may be that is has to be run out of the GL Trial balance Inquiry.
- 3) After this I'll be ready to enter the JE's and close out October. I may need you to walk through one JE with me (In case there are some quirks or things indigenous to IFS), then I'll enter the rest. I would guess we might have to open the Period 1 for GL to book the entries and then close it after the fact???? We can walk through that as well.
- 4) After JE's are entered, I'll need to run reports (Income Statement, Balance Sheet), not sure if you run a monthly T/B, G/L, GL Transaction Report???? I haven't seem an ERP system that can produce a Statement of Cash Flows, so if IFS can do it, it will be the first.
- 5) After being satisfied with all the JE's and reports (presentation) we can close out the month officially. May need you to walk me through that as well. You mentioned that is was an easy process that takes a couple of right clicks.
- 6) Are there "formal Balance Sheet Account General Ledger Reconciliations" done for 9/30/2013? I'm sure that the auditors would have wanted to review them. If you have them, could you please send them to me? If there were any reconciling items on the 9/30/2013 recons, I want to make sure that they have/or will be taken care of in October 2013.
- 7) Additionally, I want to start preparing the recons for October 2013 (all balance sheet accounts and some expense accounts) that auditors generally look at. Also, I want to keep a master excel worksheet of "reconciling items" by account, dollar and days outstanding to always know what might be at risk in making an adjustment.

However, since I've never been through a Year End with your auditors, I do not know what their PBC's (Provide by Client) entails. You mentioned that you were probably going to get a regional audit firm to do a review for Ttrae-Fuels, I imagine that your auditors would want to have some of the same info that ESI has, as Trae-Fuels Accounts "roll-up" to ESI.

As I'm at a stopping point for October 2013, I'll start reviewing and filling in an Excel spreadsheet for November 2013 JE's until I hear from you.

Thanks and talk with you soon!

Mike

--

Michael A. Donaldson
Controller

Trae-Fuels
1376 Fredericks Hall Road
Bumpass, VA 23024
Office: (540) 205-2440 Ext# 102
Mobile: (540) 642-3858
Fax: (540) 205-2455
E-mail: mdonaldson@traefuels.com

EXHIBIT 5

To: John Frink[jfrink@traefuels.com]
From: Chris LaRocco
Sent: 2014-04-30T12:32:02-04:00
Importance: Normal
Subject: Re: Trae-Fuels Cash Report as of Tuesday, April 29,2014 and Project Cash Flow for May 2014
Received: 2014-04-30T12:32:02-04:00

Okay, sounds good and sounds like a plan of action is being put in place.

On Apr 30, 2014 11:30 AM, "John Frink" <jfrink@traefuels.com> wrote:

Chris,

The plant will do well, it is the best opportunity in the industry , frustrated with getting on a call explaining why things break. Clayton has told me many times that we are now paying the price for Envivas lack of maintenance. Things some times take longer than anticipated and I believe we have done a great job getting us to the level we are at. We fight the battle everyday and know we will win and do better. Lowell will be on site next week.(told him I would castrate him if he didn't come out and fix remaining problems). I have no problem with the hours and the work just want it to be successful !



John Frink

General Manager

540 205-2440 (office)

540 205-2455 (fax)

540 642-2067 (cell)

jfrink@traefuels.com

www.traefuels.com

On Wed, Apr 30, 2014 at 11:17 AM, Chris LaRocco <clarocco@envirotechservices.com> wrote:

You sound beyond dismayed John.

Question:

With as much opportunities to win at the pellet industry (because of an abundance of sales and a low cost of plant purchase) isn't it your time to win?

If you need R&R then please suggest to Roger the same.

On Wed, Apr 30, 2014 at 11:13 AM, John Frink <jfrink@traefuels.com> wrote:

Chris,

It will be tight but we have to do it ! If we don't you should come run it and I should go home.



John Frink

General Manager

540 205-2440 (office)

540 205-2455 (fax)

540 642-2067 (cell)

jfrink@traefuels.com

www.traefuels.com

On Wed, Apr 30, 2014 at 11:08 AM, Chris LaRocco <clarocco@envirotechservices.com> wrote:

What do you think John?

On Wed, Apr 30, 2014 at 11:05 AM, John Frink <jfrink@traefuels.com> wrote:

Chris,

Thought you might want to see this.



John Frink

General Manager

540 205-2440 (office)

540 205-2455 (fax)

540 642-2067 (cell)

jfrink@traefuels.com

www.traefuels.com

----- Forwarded message -----

From: **Michael Donaldson** <mdonaldson@traefuels.com>

Date: Wed, Apr 30, 2014 at 10:15 AM

Subject: Re: Trae-Fuels Cash Report as of Tuesday, April 29, 2014 and Project Cash Flow for May 2014

To: Roger Knoph <rknoph@envirotechservices.com>

Cc: John Frink <jfrink@traefuels.com>, Kevin Whyrick <kwhyrick@envirotechservices.com>

Good Morning Roger:

John has asked me to forward to you the Cash Report, which has been prepared through Close of Business, Tuesday, April 29, 2014. I've also provided a May 2014 Cash Flow synopsis.

As far as Cash Flow for May 2014 is concerned (pending any major system repairs, replacements or Cap Ex purchases), I'm estimating them as following.

Projected Cash Inflows:

Northcrest Forest Products - 50% deposit on 4,000 ton order - \$310,000.00 2000 tons @ 155.00 per ton (due around May 7 2014 according to Christian Bach, I'm told).

TRAE-PROD0007336

Northeast Forest Products - Should be able to produce and have cash in the bank, by end of May for another 1000 tons (which is scheduled to ship each week) - \$155,000. Should ship out all 4000 tons in May, but last weeks shipment of 1000 tons, won't be in bank until 1st week in June.

Eco - Pellet - Possibility of additional revenue stream for Eco-Pellet (which bags are due to arrive next week according to Christian Bach), but contingent on production constraints. We are contracted to ship 2,500 tons a month, but Christian believes that the customer is flexible and we can ship perhaps 500 tons during May @ @ \$206 a month

Total Estimated Cash Inflows for May 2014:

Northeast Forest Products - \$465,000.00 (3000 tons @ 155)

Eco-Pellet - \$103,000.00 (500 tons @ \$206)

Total estimated Cash Inflows: \$568,000.00

Total Estimated Cash Outflows for May 2014

Accounts Payable - \$400,000.00 (\$100,000 per week bearing any major repairs, capex,

Payroll - \$150,000.00 (estimated based on increase levels in production around 4,500 -5,000 tons of production and increase in staff to support 24/7 days of productions with minimum overtime. Could be more if there are hiccups in production schedule (due to repairs, downtime, etc), or less if production is at lower levels.

Estimated Outflows of Cash for May 2014 \$550,000.00

Net cash Flow for May 2014 - Positive \$18,000
Plus current Cash Balance @ 4/29/2014 - Positive \$377,700.55

Net Cash positive Balance projected @ 5/31/2014 \$395,700.55

Thanks,

Mike

--

Michael A. Donaldson
Controller

Trac-Fuels
1376 Fredericks Hall Road
Bumpass, VA 23024
Office: (540) 205-2440 Ext# 102
Mobile: (540) 642-3858
Fax: (540) 205-2455
E-mail: mdonaldson@tracfuels.com

--

Respectfully;

Chris LaRocco
Corporate Strategist

EnviroTech Services, Inc
9663 Berrien St.
Suite 1
Union Pier Michigan, 49129

Work: 970-346-3923
Ext: 407
Cell: 773.875.2053
Fax: 269-645-5909
Web: www.envirotechservices.com

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--

Respectfully;

Chris LaRocco
Corporate Strategist

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Web: www.envirotechservices.com

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EXHIBIT 6

To: riccardo@ecopellet.it[riccardo@ecopellet.it]
Cc: John Frink[jfrink@traefuels.com]; Christian Bach[cbach@traefuels.com]
From: Michael Donaldson
Sent: 2014-05-29T10:10:47-04:00
Importance: Normal
Subject: Re: Trae-Fuels
Received: 2014-05-29T10:10:47-04:00

Good Morning Riccardo,
My name is Mike Donaldson, controller for Trae-Fuels in Bumpass, VA in the USA.

I've been working with Christian Bach to assist in setting up Eco-Pellet as a customer and was involved in the contract drafting which Eco-Pellet and Trae-Fuels executed for the production of 30,000 Metric tons for the period of April 15, 2014 - May 15, 2015, with a monthly production volume equal to 2,500 Metric tons.

In the signed contract, Eco-Pellet agreed to forward a wire transfer 14 days in advance to the shipment of the product. We have been producing product for Eco-Pellet and have purchased the bags for the job and incurred considerable "up-front" expense in attempting to execute our responsibilities under the contract in good faith.

We feel that we are getting off to not so good of a start in our relationship, as we have been awaiting a wire transfer for the first month's product production to be shipped of 2,500 tons. I know that Christian Bach has been in communication with you, to follow up on the status of your wire transfer.

Unfortunately, we have stopped production for Eco-Pellet until we receive the wire transfer for the the first month's production as agreed in the amount of \$515,000.00 USD (2,500 MT @ \$206 per MT). We would at least \$257,500 USD wired immediately to hold your contract, with balance of payment of \$257,500 in 7 days before we will ship the product for the first month. If we do not hear from you soon, then under the terms of the contract we will have to seek other parties to sell what has already been produced for Eco-Pellet.

Please advise us of your intentions within the next two days, or we will begin contacting other parties to sell the product. If you have any questions or concerns, please feel free to contact me at (540) 205-2440.

Thank you,

-
Michael A. Donaldson
Controller

Trae-Fuels
1376 Fredericks Hall Road
Bumpass, VA 23024
Office: (540) 205-2440 Ext# 102
Mobile: (540) 642-3858
Fax: (540) 205-2455
E-mail: mdonaldson@traefuels.com

EXHIBIT 7

To: Michael Donaldson[mdonaldson@traefuels.com]
From: Chris LaRocco
Sent: 2013-12-19T13:38:08-05:00
Importance: Normal
Subject: Re: International Forest Products - Credit Information
Received: 2013-12-19T13:38:08-05:00

Great work! Keep those sales guys on the straight and narrow.

On Thu, Dec 19, 2013 at 12:34 PM, Michael Donaldson <mdonaldson@traefuels.com> wrote:

Chris,

Yes, this is IFP's Credit information sheet and it is signed, but it is not our credit application. Our credit application stipulates our terms and when signed grants us permission to run the credit checks etc. This is what we need from Steve Maneri.

I just got off the phone with Christian and is going to attempt to get Steve to sign the Trae-Fuels Credit Application. In addition, Kevin suggested we get a copy of their P.O., obtain our customer-set up form completed and if possible financial statements. Christian did tell me they are a privately held corp, so it may be difficult to get that. So, we are moving in the right direction.

On Thu, Dec 19, 2013 at 12:24 PM, Chris LaRocco <clarocco@envirotechservices.com> wrote:

This one is there's and is signed correct Michael?

On Thu, Dec 19, 2013 at 12:14 PM, Michael Donaldson <mdonaldson@traefuels.com> wrote:

Kevin,

I just spoke with Christian Bach and he forwarded their Credit Information Sheet (Please see attached).

Christian told me that Steve is going on vacation starting tomorrow and wanted to get booked before he left.

As, I understand it, from Christian that IFP is a Fortune 500 Corporation and the Kraft's also own the New England Patriots and Gillette Stadium in Foxboro, MA.

I will see if we can get the Steve Maneri to sign the Credit App, get a copy of the P.O, customer set-up form. and maybe go on-line to obtain their financial.

Mike

--

Michael A. Donaldson
Controller

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E-mail: mdonaldson@traefuels.com

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Respectfully;

Chris LaRocco
Corporate Strategist

EnviroTech Services, Inc
9663 Berrien St.
Suite 1
Union Pier Michigan, 49129

Work: 970-346-3923
Ext: 407
Cell: 773.875.2053
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Michael A. Donaldson
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Respectfully;

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EXHIBIT 8

To: Beth Aleman[baleman@envirotechservices.com]
From: Michael Donaldson
Sent: 2014-01-22T15:40:38-05:00
Importance: Normal
Subject: Re: Daniel Horseman
Received: 2014-01-22T15:40:38-05:00

You're Welcome!

On Wed, Jan 22, 2014 at 2:35 PM, Beth Aleman <baleman@envirotechservices.com> wrote:

Yes! We are done!!! yea!!
Thank you.

On Wed, Jan 22, 2014 at 12:34 PM, Michael Donaldson <mdonaldson@traefuels.com> wrote:

Hi Beth:

Danny completed the CIGNA questionnaire today and I scanned it over to you a few hours ago.

Mike

--

Michael A. Donaldson
Controller

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Facebook:

[envirotechservices](#)

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EXHIBIT 9

To: Michael Donaldson[mdonaldson@traefuels.com]
From: Chris LaRocco
Sent: 2014-02-06T18:18:26-05:00
Importance: Normal
Subject: Re: ECO -PELLET (ITALY)
Received: 2014-02-06T18:18:26-05:00

Okay, great data Mike!

On Thu, Feb 6, 2014 at 5:15 PM, Michael Donaldson <mdonaldson@traefuels.com> wrote:

I've scanned over to you the D&B for ECO-PELLET (Christian gave me the name of the President and I was able to find this report. We do not have the official customer set up form so I can confirm it, so tread lightly, but it seems correct). I believe that you will be impressed with the growth of this company, if the financial numbers are correctly reported to D&B, also their timely payments. Went from sales of 295,000 Euros in 2008 to 11,000,000 Euro in 2012. I think they want some sort of credit terms according to Christian and will not prepay. It may be in the form of an LC. As I won't be on the 11 AM call tomorrow and if this comes up, you have some preparation time.

Mike

--
Michael A. Donaldson
Controller

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E-mail: mdonaldson@traefuels.com

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Respectfully;

Chris LaRocco
Corporate Strategist

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